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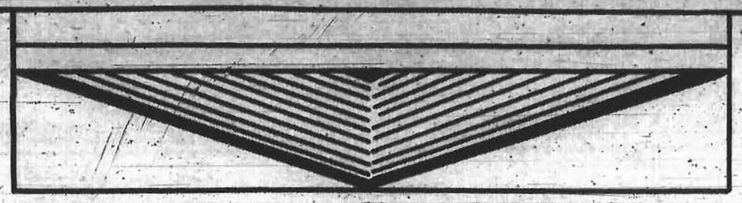

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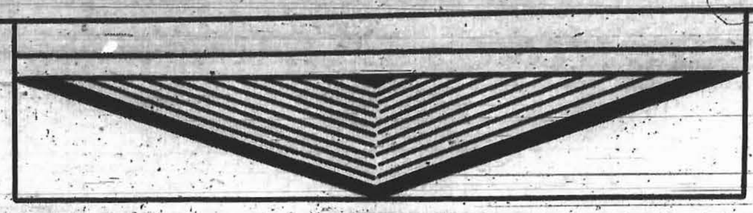

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RED. 13

EXP. 50

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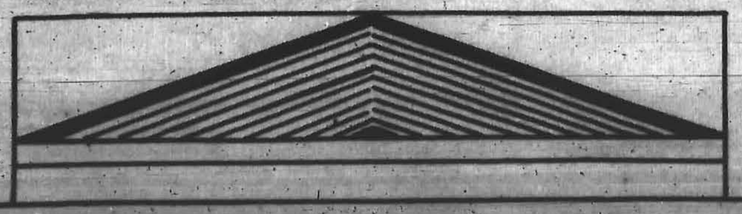

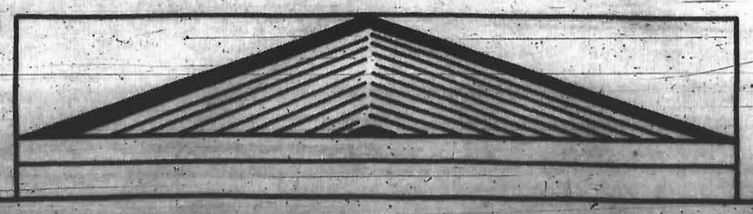

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Georgia - Supreme Court

Supreme Court Case File

Leo Frank v. The State

Due to a high reference rate in the past and an anticipated high rate in the future, these portions of a much larger record series are filmed as a protection and as an assist to researchers.

Feb. 17, 1914 First Appeal 141Ga243
Bill of Exceptions or Enumeration of Errors
Brief of Evidence
Record of case

Oct. 14, 1914 Second Appeal 142Ga617
Brief of Evidence, original and amended
Record of case including copy of first appeal

Nov. 14, 1914 Third Appeal 142Ga741

Record Group Georgia Supreme Court 92
Sub-Group Office of Clerk of Supreme Court 1
Series Supreme Court Case Files 1

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GR:DAE

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CRIMINAL

October Term, 1918.

State of Georgia, Fulton County.

Be it remembered that at the July Term, 1913, of Fulton Superior Court,--His Honor, L. S. Roan, one of the judges of the Superior Court of the State of Georgia presiding--there came on to be tried the case of the State of Georgia vs. Leo M. Frank, the same being an indictment for murder. On the trial of said case, the jury found the defendant guilty without any recommendation of life imprisonment and the court imposed the death sentence upon the defendant.

At the same term at which said verdict was rendered, and in due and legal time, defendant made a motion for new trial upon the grounds therein stated, and said motion came on to be heard and was regularly passed, on the 31st day of October, 1913.

Upon the hearing of said motion for new trial, said movant, Leo M. Frank, presented a proper brief of the evidence in said case, which was approved by the court as true and correct, and which is here and now stated to be true and correct in this bill of exceptions.

Said movant at the hearing of said case, also presented an amended motion for new trial, and the court certified that the recitals of fact contained in both the original and the amended motions for new trial were true and approved the grounds of both the original and the amended motions for new trial, and here and now states that the recitals contained in the grounds of both said original and amended motions for new trial are ture.

In considering the said motion for new trial and in deciding upon the same, the court treated as part of the record and considered the following affidavits and depositions presented by the movant, to-wit:

R. L. Cremer makes the following affidavit, deposing and saying as follows ; That he is a resident of Albany, Georgia; that he is acquainted with Mack Farkas, who works for Mr. Sam Farkas, who operates a livery stable and sale barn in Albany; that between the time of the murder of Mary Phagan, and the trial of Leo M. Frank, the exact date this deponent cannot state, deponent was standing in front of Mr. Sam Farkas' place of business on Broad Street, in the presence of Mack Farkas and others, including a party by the name of A. H. Henslee; said Henslee is the same party whose picture appears on page 2 of the "Atlanta Georgian" issue of August 26th, and on page 2 of the "Georgian" of the same paper of August 23rd as a juror in the Frank case; at said time and place, deponent heard said Henslee express his conviction that Frank was guilty of the murder of Mary Phagan; his exact language was "There can be no doubt that Frank is guilty, I know he is guilty", referring to the murder of Mary Phagan; deponent stated to said Henslee, "It is queer that a man of Frank's standing could be guilty of such a crime". Henslee said "without a doubt he is guilty"; deponent said, "What do you mean by 'without a doubt'? Henslee answered "positively, without a doubt to my mind or to anyone else's.

Mack Farkas, makes the following affidavit, deposing and saying as follows: that he is a resident of Albany, Georgia, and is connected with Sam Farkas, who runs a livery stable and sale barn in Albany; that between the time of the murder of Mary Phagan and the trial of Leo Frank, he heard a party discussing the case in front of the place of business of said Sam Farkas, in Albany, Georgia, in the presence of this deponent and others, including one R. L. Cremer, a resident of Albany, Ga., said party whom this deponent recalls as being named Henslee, and whose picture appears on page 2 of the Atlanta Georgian of August 23, and on page 2 of the Atlanta Georgian of August 26th, as being one of the Frank jury, expressed himself as being convinced of Leo M. Frank's guilt of the murder of Mary Phagan; the exact language used by said party deponent does not recall, but his recollection is that he used the words "I believe Frank is guilty", referring to the murder of Mary Phagan.

In Poor Condition

Julian A. Lehman, makes the following affidavit, deposing and saying as follows: that he is personally acquainted with A. H. Henslee, one of the jurors in the above case; that on June 2,1913, between Atlanta, Ga., and Experiment, Ga., the said Henslee expressed his opinion that Frank was guilty of the murder of Mary Phagan, and that this was in deponent's presence and hearing; and in the hearing of other persons on the train at the time; the words used to the best of deponent's knowledge and recollection were "Frank is as guilty as a damned dog, and ought to have his God damned neck broke"; this was in reference to Leo M. Frank, and before the trial; that again, on June 20, 1913, the said Henslee made practically the same statement of and concerning the connection of Leo M. Frank with the murder of Mary Phagan in deponent's hearing; that on both occasions the said Henslee showed great feeling, he expressed the aforesaid conviction firmly and positively and vehemently.

Samuel Aron makes the following affidavit, deposing and saying as follows: that after the indictment of Leo M. Frank for murder, as near as he can recall about two days after the indictment, this deponent was at the Elks Club on Ellis Street, Atlanta, Georgia; that at that time he saw one A. H. Henslee, not then known to this deponent by name, but now known and recognized by this deponent as one of the jurors who tried the Frank case and returned a verdict of guilty; said A. H. Henslee was at said Elks Club at the time mentioned, and made the statement in this deponent's hearing: "I am glad that they indicted the God damn Jew. They ought to take him out and lynch him, and if I get on that jury, I'll hang that Jew sure." This statement was made in connection with the indictment of Leo M. Frank for the murder of Mary Phagan, and made in this deponent's hearing by the said A.H. Henslee, who afterwards served on said jury and brought in a verdict of guilty; that at this time this deponent left the Club, not caring to get into the argument, which was becoming heated and which was very condemnatory of Leo M. Frank by the said A. H. Henslee.

L. Z. Rosser, Morris Brandon, R. R. Arnold, and H. [illegible] Rose, make the [illegible]

they are the sole counsel of defendant in the above case and they make this affidavit to be used as evidence on the motion for new

In Poor Condition

trial in said case ; that since the trial of said case and the verdict and sentence therein, it has come to their knowledge that two of the jurors who sat on said case, to-wit: M. Johenning and A. H. Henslee, were prejudiced, partial and biased against Leo M. Frank, the defendant as evidenced by affidavits attached to motion and hereinafter referred to; that said prejudice, partiality and bias were present on their part, when said Johenning and Henslee qualified as jurors in said case as shown by said affidavits, but that the facts were unknown to these deponents at the time of the trial of said case, and at the time said jurors qualified on the voir dire of said case; and these deponents had no means of knowing said facts until after said trial; that not until after the trial of said case did they know or have any means of knowing that said Johenning and Henslee, or either of them, hadmade any statement of any kind to, or in the presence of, any of the following persons, to-wit: H.C.Levenhart, Mrs.J.G.Levenhart, Miss Mariam Lovenhart, S. Aron, Mack Farkas, R.L. Gremer, Jno. M.Holmes, Shi Gray, S. M. Johnson, J.J.Nunnally, W.L. Ricker, J. A. Lehman, C.P.Stough, or any other person, of and concerning said Leo Frank in connection with the murder of Mary Phagan, or in connection with said trial, or the possible outcome of said trial; that they have been guilty of no laches in this matter, but that they have used every means of obtaining the facts in connection with statements made by said persons, and all of them, and all of said statements have come to their knowledge since the rendition of the verdict and sentence in said case, as is shown by the dated mentioned in the jurats to each affidavit, anddeponents have brought same to the attention of the Court at the earliest possible moment at which the Court could take cognizance of said affidavits after the trial, which is the date on which the rule nisi is on return; that is, October 4, 1913, same being on that day presented to the Court as part of the motion for new trial; they say that had they known at the trial of any of the facts or statements of the jurors, which would disqualify, or tend to disqualify, said jurors, or either of them, when said jurors were put upon the voir dire in said case, these deponents would have [illegible] same to the attention of the Court at said time.

Mrs. Jennie G. Lovenhart, makes the following affidavit, deposing and saying as follows: that she is personally acquainted

with M. Johenning, one of the jurors who served in the trial of Leo M. Frank for murder of Mary Phagan; that during May, 1913, said M. Johenning met deponent and deponent's daughter on Forsyth Street, Atlanta, Georgia, and then and there the said M. Johenning expressed to the deponent and deponent's daughter his firm belief that Leo M. Frank was guilty of the murder of Mary Phagan. This statement was made by M. Johenning forceably and positively and as his profound conviction.

H. C. Loevenhart makes the following affidavit, deposing and saying as follows: that for some eighteen months prior to July, 1913, he was connected with the Hodges Broom works in the City of Atlanta; that he is personally acquainted with M. Joehenning, one of the jurors in the above case, and that during the month of May, 1913, said M. Johenning had a conversation with this deponent, in which he discussed the death of little Mary Phagan; that in said conversation the said juror, M. Johenning, expressed his opinion to depon nt that Frank was guilty of the murder of Mary Phagan, and that it was his profound conviction.

Miss Miriam Loevenhart makes the following affidavit, depesing and saying as follows: that she is personally acquainted with M. Johenning, a juror, who served in the above stated case; she says that prior to the trial of Leo M. Frank, said juror, M. Johenning, had a conversation with this deponent and deponent's mother, and in their presence expressed his profuund conviction that Leo M. Frank was certainly guilty of the murder of Mary Phagan; that said M. Johenning made this statement, positively, almost vehemently, and that his exact language, which was in response to a remark from this deponent in reference to the case was, as near as deponent recalls, "I know that he is guilty", referring to Leo Frank; that said Johenning made this statement more than once to this deponent before the commencement of the trial of Leo M. Frank for murder.

Leo M. Frank makes the following affidavit, deposing and saying as follows: that he is the defendant in the above stated case, and that his sole counsel in said case were L. Z. Rosser, Morris Brandon, R. R. Arnold and H. J. Haas; that at and before said trial was entered on, and during the whole of said trial that affiant had

no knowledge whatsoever as to M. Johenning and A. H. Henslee, two of the jurors, being prejudiced, partial and biased in said case, as evidenced by the affidavits of H. D. Lovenhart, Mrs. J.C.Lovenhart, Miss Marian Lovenhart, S. Amon, Max Farkas, R.L.Grener, John W. Holmes, Shi Gray, S. M. Johnson, J.J.Nunnally, W.L.Ricker, J.A.Lehman and C.P. Stough. Affiant did not know either of said jurors and had never seen or heard of them before; that he did not know until after the trial and did not have any means of knowing until after said trial, that said Johenning and said Henslee, or either of them, had made any statement of any kind to or in the presence of any of the persons hereinbefore named; that before said trial, at the time of entering upon said trial, and during said trial, he had no knowledge or means of knowing that said persons were prejudiced, partial or biased, as is shown by the affidavits or depositions of the persons named, and the facts stated in said affidavits and depositions were unknown to this affiant until after the verdict and sentence in said case; that he has been guilty of no laches in this matter, and has, together with his counsel, used all the means at hand to obtain the facts and circumstances in connection with the statements made by said parties and all of them; that said facts were discovered after the verdict and sentence of the court in the case above stated, and the affidavits of said witnesses were taken on the dates shown in the jurat to each affidavit, and the same are brought to the attention of the court by being presented on the day for the return of the rule nisi, which is October 4, 1913, and which is the earliest time at which such affidavits could be brought to the attention of the court; he further says that had he known at the trial of any facts or statements which would disqualify, or tend to disqualify, said jurors, or either of them, when said jurors were upon their voir dire in said case, that this affiant would have had his counsel bring the same to the attention of the Court promptly at that time.

W. P. Neill makes the following affidavit, deposing and saying as follows: that he was present in the courtroom during the trial of Leo M. Frank, for the murder of Mary Phagan, for two full days during the trial, and from time to time on other days; that at the time of the facts hereinafter stated, deponent was sitting just where the jury passed by going from the jury box to the rear end of the court

no knowledge whatsoever as to M. Johenning and A. H. Henslee, two of the jurors, being prejudiced, partial and biased in said case, as evidenced by the affidavits of H. B. Lovenhart, Mrs. J.C.Lovenhart, Miss Marian Lovenhart, S. Amon, Max Farkas, R.L.Grener, John W. Holmes, Shi Gray, S. M. Johnson, J.J.Munnally, W.L.Ricker, J.A.Lehman and C.P. Stough. Affiant did not know either of said jurors and had never seen or heard of them before; that he did not know until after the trial and did not have any means of knowing until after said trial, that said Johenning and said Henslee, or either of them, had made any statement of any kind to or in the presence of any of the persons hereinbefore named; that before said trial, at the time of entering upon said trial, and during said trial, he had no knowledge or means of knowing that said persons were prejudiced, partial or biased, as is shown by the affidavits or depositions of the persons named, and the facts stated in said affidavits and depositions were unknown to this affiant until after the verdict and sentence in said case; that he has been guilty of no laches in this matter, and has, together with his counsel, used all the means at hand to obtain the facts and circumstances in connection with the statements made by said parties and all of them; that said facts were discovered after the verdict and sentence of the court in the case above stated, and the affidavits of said witnesses were taken on the dates shown in the jurat to each affidavit, and the same are brought to the attention of the court by being presented on the day for the return of the rule nisi, which is October 4, 1913, and which is the earliest time at which such affidavits could be brought to the attention of the court; he further says that had he known at the trial of any facts or statements which would disqualify, or tend to disqualify, said jurors, or either of them, when said jurors were upon their voir dire in said case, that this affiant would have had his counsel bring the same to the attention of the Court promptly at that time.

W. P. Neill makes the following affidavit, deposing and saying as follows: that he was present in the courtroom during the trial of Leo M. Frank, for the murder of Mary Phagan, for two full days during the trial, and from time to time on other days; that at the time of the facts hereinafter stated, deponent was sitting just where the jury passed by going from the jury box to the rear end of the court

room, he was sitting on the front row of the spectators benches; that during the course of the trial deponent saw the jury pass to the jury box from the rear of the court room, the jury passed immediately by this deponent and also by a man, whose name is unknown to this deponent, but who was a spectator in the court room, who was sitting about three feet from this deponent, just across an aisle, no one being between this man and deponent; as the jury passed this man, at the time specified, this man took hold of one of the jurors, he took the juror by the hand with one hand and grasped his arm with the other hand and made a statement to him, said something to the juror which this deponent did not understand sufficiently to be able to quote, but this deponent says that he made some statement to the juror while he had him thus by the hand and arm; he says that this act was witnessed by Plennie Minor, so this deponent believes, for the reason that as soon as this happened, the said Plennie Minor immediately came back to this man, and threatened to put him out of the court. Plennie Minor told this man that he, Plennie Minor, saw him, the man, take the juror by the hand and say something to him; the man remonstrated with Plennie Minor, and this deponent heard Plennie Minor repeat to him that he, Plennie Minor, saw him, the man, speak to the juror; Deponent further says that on two occasions, while he was sitting in the court room at the trial, at one time while he was about six to ten feet from the jury, this deponent heard shouts and cheering on the outside of the house from the crowds collected outside; one of said times was during Dorsey's speech. While this deponent does not say whether or not the jury heard this cheering, he does say that he, the deponent, heard it, plainly and distinctly and was within a few feet from the jury at the time he heard it. He further says that on one occasion he heard cheering in the court room; the Judge said that unless the cheering stopped he would have to clear the court room, and to rhis, Deputy Sheriff Minor replied that that would be the only way he could stop the cheering in the court room.

B. M. Kay makes the following affidavit, deposing and saying as follows: that he is a resident of the City of Atlanta, lviing at #264 S. Pryor Street; that on Saturday evening, August 23, 1913, about 8 or 8:30 o'clock P. M. he was driving his father's automobile down South Pryor Street, going South, there being in the automobile with him, his mother, Mrs. Rose Kay, and his brother, Sampson Kay; that a

the automobile appraached the corner of South Pryor and East Hunter Streets, he observed the jurymen in the Frank case turn into South Pryor from the east, out of East Fair Street, and deponent stopped his automobile to look at the jury, and upon doing so noticed that walking alongside the jury were some six or seven other men. Deponent was on the west side of South Pryor Street while the jury in the above entitled case was walking north along the east side of South Pryor Street. Deponent's brother, Sampson Kay, got out of the automobile stating to deponent that he was going to follow the jury.

Miss Martha Kay makes the following affidavit, deposing and saying as follows: that on the last day of the trial of Leo M. Frank in the above stated case, August 25th, 1913, she was present in the court room and when the audience applauded Judge Roan stated to the sheriff that the cheering and demonstrations would have to stop or the court room would have to be cleared, to which sheriff replied, "Your Honor, that is the only way it can be stopped."

Mrs. A. Shurman, makes the following affidavit, deposing and saying as follows: that on the last day of the trial of Leo M. Frank, in above stated case, August 25, 1913, she was present in the court room and when the audience applauded Judge Roan stated to the sheriff that the cheering and demonstrations would have to stop or the court room would have to be cleared, to which the sheriff replied, "Your Honor, that is the only way it can be stopped."

Mrs. A. Shurman makes the following affidavit, deposing and saying as follows: that she is a resident of the City of Atlanta, living at #240 Central Avenue; that on Monday morning, August 25,1913, the last day of the trial of the said Leo M. Frank in the above stated case, she was present in the court room in company with Miss Martha Kay of #264 S. Pryor Street, before time for court to open; that she saw the jury in said case enter said court room and take their places, and in a few moments, Mr. Hugh M. Dorsey, the Solicitor General of said court entered the room; just before he entered the room there was loud cheering in the street immediately outside the court room for "Dorsey", all of which was loud and long continued and plainly audible to any one in the court room; as Mr. Dorsey entered the court

room there was also cheering in said court room. There was also applauding in the course of Mr. Dorsey's speech a couple of times on said date.

Miss Martha Kay makes the following affiavit, deposing and saying as follows: that she is a resident of the City of Atlanta, living at #264 South Pryor Street; that on Monday morning, August 25, 1913, the last day of the trial of the said Leo M. Frank, in the above stated case, she was present in the court room in company with Mrs. A. Shurman of #240 Central Avenue, before time for court to open; that she saw the jury in said case enter said court room and take their places, and in a few moments Mr. Hugh M. Dorsey, the Solicitor General of said court, entered the room, just before he entered the room there was loud cheering in the street immediately outside the court house for "Dorsey", all of which was loud and long continued and plainly audible to any one in the court room; as Mr. Dorsey entered the court room there was also cheering in said court room. There was also applauding in the course of Mr. Dorsey's speech a couple of times on said date.

Sampson Kay makes the following affidavit, deposing and saying as follows: That he is a resident of the City of Atlanta, living at #264 South Pryor Street; that on Saturday evening, August 23rd, 1913, about 8 or 8:30 o'clock P. M. he saw the jury in the above entitled case walking along South Pryor Street with a deputy Sheriff in front and another walking in the rear of said jury; said jury turning into South Pryor Street from East Fair Street, and thence up South Pryor Street to the Kimball House. Deponent followed the jury some 15 or 20 feet in the rear thereof, from E. Fair Street up South Pryor St. to near the corner of E. Mitchell and S. Pryor, when he passed ahead and waited on the corner of said streets until the jury had passed, and then continued to follow them up to the Kimball House. This deponent says that there were some six or seven men walking alongside the jurymen talking to them all the way from the corner of E. Fair and South Pryor Streets, up to the Union Station, just north of corner of East Alabama and S. Pryor Street, when the men left them, and the jury went on and entered the Kimball House through the Wall Street entrance.

Samuel A. Boorstin makes the following affidavit, deposing and saying as follows: that on Friday evening, on the 22nd day of August, 1913, at about 5 or 5;30 P. M., he was present at the court room ofFulton Superior Court, Judge L. S. Roan presiding, during the trial of the State vs. Leo M. Frank; and after adjournment, and when the jury had been taken from the court room, and shortly thereafter, the Solicitor General, Hugh M. Dorsey, had passed out of the court room, there was a large crowd waiting outside, through which the jury passed, comprising, perhaps, no less than two or three thousand people; that this crowd did tumultously and noisily applaud and cheer the Solicitor General, and did congregate around the court room on the outside, standing in great numbers, both on the street and on the sidewalks;that deponent, upon adjournment of court, was walking up Pryor Street from said court room in a northerly direction, and when he reached Pryor and Alabama Streets, he saw two persons peering out of the third floor corner window in the Kimball House, looking in a southward direction at the large crowd congregated between the Kiser Building and the court house; that, as deponent continued walking northward and reached the restaurant in the Union Car Shed, corner Pryor and Wall Streets, he still observed one of the figures in the jury room peering southward, with both hands upon the window-sill, whom he recognized as being Juror Smith, one of the jurors in the case of the State vs. Leo M. Frank, and then being on trial. The other person, who had his head through the window peering southward, had by this time stuck his head back into the room, and deponent could not tell who he was.

W. B. Cate makes the following affidavit, deposing and saying as follows: that on September 1, 1913, in the afternoon, I was standing at the corner of Alabama street and S. Pryor Street, and had intended to go down S. Pryor Street to the court house where the Frank trial was being conducted, but was unable to get a ny closer to the court house on account of the crowd that had gathered in the street, I was in about one block of the court house. While I was standing at this place, I heard a great deal of cheering and shouting, the street being full of men most of whom were making noise and cheering. I saw some one come out of the court house, whoI understood was Hugh Dorsey, the solicitor, and he was picked up by some of the crowd and carried across the street on the shoulders of the men who

had him. I could not see the man that wascarried on the shoulders of the men very well, but was told that it was Dorsey. There was a this time fully three thousand men gathered around the court house, filling the streets on all sides of the court house. I only know Col. Dorsey by sight.

J. H. G. Cochran makes the following affidavit, deposing and saying as follows: that he is a resident of Atlanta, Georgia; he remembers the close of the trial of Leo M. Frank, and was present in front of the court house in Atlanta, Georgia, on the day that th case closed and on the day that the jury returned the verdict of guilty in said case; that on the day aforesaid, to-wit; that the jury returned the verdict, Mr. Cochran was standing in front of the court house at the time the jury came out of the court house to go to dinner; at just about the same time or near that time, and while the jury were in the vicinity of the court house, Silicitor General Hugh M. Forsey came out of the court house and went across the street to the Kiser Building.

Deponent says that at the appearance of Solicitor Dorsey on the street coming from the court house the crowd in the street, numbering between 500 and 1,000 people, to the best of this deponent's estimate, broke into loud and tumultuous cheering of the Solicitor, the jury being at the timenear the court house and proceeding up Pryor Street, and being within sight of this deponent at the time the cheering commenced, and that said cheering lasted the whole time that the Solicitor General was crossing the street and until he had entered the Kiser Building.

This deponent knows that this cheering which took place in the presence of the jury, or in their hearing, and while they were on Pryor Street a short distance from the court house, was cheering for the Solicitor, and he remembers the Solicitor's stopping at the entrance of the Kiser Building and taking off his hat and bowing to the crowds cheering him; not only were the crowds cheering him, but people in the windows of the Kiser Building were also cheering and waving their hand and handkerchiefs at the Solicitor; all of which was practically in the presnece of the jury, at least within their hearing, before they proceeds upPryor St. He says that on said day the jury took dinner at the Germa Cafe, on South Pryor St., a distance of approximately 150 feet to 200

feet from the Kiser Building, and that both outside of the Cafe and in the Cafe, the cheering of the Solicitor General could be heard by any person.

H. G. Williams, makes the following affidavit, deposing and saying as follows: that on the ~~Frank~~ day the Frank trial closed, and verdict of guilty was found by the jury against Leo M. Frank, accused of the murder of Mary Phagan, this deponent was on South Pryor Street, in front of the court house;

This deponent saw Solicitor General Dorsey came from the Court House and cross the street to the Kiser Building in the presence of exceeding 500 people, who cheered his appearance at the entrance of the court house with loud and continued cheering, which cheering continued until he had entered ~~the Kiser~~ Building across the street, and ~~which cheering was acknowledged by Solicitor Dorsey at the entrance of~~ the Kiser Building, where he turned and raised his hat to the people who were cheering him;

Just preceding Solicitor Dorsey, the jury had come out of the Court House and had gone a short way up the street to the German Cafe for lunch; at the time of this cheering, which could be heard for a great distance on all sides of the court house, the jury were in easy hearing distance of the noise during the whole time when the crowd was cheering Solicitor Dorsey.

Said demonstration over the Solicitor General occupied not less than three minutes, and perhaps not exceeding five minutes, and took place on the last day of the trial, immediately after the jury had come from the court house on their way to dinner. Further deposing this deponent says that practically the same demonstration took place on Saturday preceding the time hereinbefore specified, at the time whenSolicitor Dorsey came from the court house to go to his office and when the jury were proceeding from the court house; said demonstration on Saturday being in the presence of the Solicitor and in the hearing of the jury, and being a demonstration over the Solicitor General.

E. G. Pursley, makes the following affidavit, deposing and saying as follows: that he is a resident of the City of Atlanta, residing at #50 Ponders Ave., with office at #700 Temple Court; that on

Friday noon, before the above stated case went tothe jury on Monday, he was present in the court room where the trial of Leo M. Frank was being held; that when court adjourned and the jury had left and gone to lunch he came out of the court house and there was loud cheering for "Dorsey", which lasted for several minutes. Deponent walked from the court house to his office on seventh floor of Temple Court Building, and when he reached his office some one asked deponent what all the racket or fuss was about down on the street.

Marana Benbenisty makes the following affidavit, deposing and saying as follows: that he was standing outside of the court house on Friday afternoon, August 22nd, at about12:20, and I saw the jury come out of the court room. Soon after the jury came out of the court room, Mr. Dorsey came out, and the crowd set up cheering and helling "Hurrah for Dorsey". At the time of the yelling and cheering the jury was just crossing the street towards the Barbers' Supply Company, which is next to the Kiser Building. That in the opinion of deponent there was about a thousand people crowding about the court room.

Isaac Hazan makes the following affidavit, deposing and saying as follows; that he was standing outside of the court house on Friday afternoon, Aug. 22nd, at about 12:20, and I saw the jury come out of the court room. Soon after the jury came out of the court room, Mr. Dorsey came out, and the crowd set up cheering and yelling "Hurrah, hurrah". At the time of the yelling and cheering, the jury was just crossing the street towards the Barbers' Supply Company, which is next to the Kiser Building; that in the opinion of deponent there was about a thousand people crowding about the court room.

Deponent further states that as the jury reached the other side of Pryor Street in front of the Barbers' Supply Company, deponent heard ten or fifteen men in front of the court house yelling toward the jury that unless they brought in a verdict of guilty,that they would kill the whole damn bunch; that in the opinion of deponent,the jury must have heard them, because one of the jurors turned his face toward the yelling just when that occurred.

John H. Shipp makes the following affidavit, deposing and saying as follows: that on Friday, August 22, he was in room 301 of the Kiser Building, corner Hunter and So. Pryor Streets; that he saw

thenjury come out of the court house about six P. M.; that a few minutes after the jury came out of the court house, Mr. Dorsey appeared in the entrance, whereupon a great cheer arose from the people crowding in the streets and around the court house entrance; that at that time deponent saw the jury about fifty feet from the entrance of the court house, the jury at that time crossing the street diagonally toward the German Cafe; that in the opinion of deponent the yells and cheers could have been heard several blocks away; that the crowd yelled "Hurrah for Dorsey" and that the words were plainly audible.

Deponent further states that he was in room 301 of the Kiser Building, on Saturday, August 23; that he saw the jury emerge from the court house entrance at about one o'clock; that a few minutes after the jury came out, Mr. Dorsey came out and immediately a great crowd around the court house door set up a yell and cheer, saying "Hurrah for Dorsey", taking off their hats and throwing them in the air and otherwise exhibiting their enthusiasm; that at the time of the yelling the jury was not in sight of the depone,t but deponent is of the opinion that they were within easy hearing of the yelling and must have heard all that transpired.

Deponent further states that while he has been around the court house, during the progress of the trial, he has heard numerous threats of violence to the accused in case of an acquittal; that deponent knows that one of the persons making threats was armed; that he exhibited his weapon at time of making threat.

B. S. Lipshitz makes the following affidavit, deposing and saying as follows: That he was out in front of the court house mingling with the crowd, at about one P. M. on Saturday, August 23, immediately after court adjourned; that deponent saw the jury come out and about one or two minutes thereafter, Mr. Dorsey came out, whereupon there was great cheering and yelling by the crowd; that at the time the yelling and cheering took place, the jury could not have been more than one minute's walk away from the court house, and in the opinion of deponent, they could have heard the cheering and yelling;

Depone further states that he was also present at the court house on Friday evening, August 22nd, when Mr. Dorsey left the court house, and heard the cheering and heard the crowd yelling "Hurrah".

Charles J. Moore makes the following affidavit, deposing and saying as follows: that he is an attorney at law, occupying room 301 on the 3rd floor of the Kiser Building, at the corner of Hunter and So. Pryor Streets; that on Friday, August 22nd, deponent was in his office and saw the jury come out of the court house entrance at about 6 P.M. that soon after Mr. Dorsey appeared in the court house entrance and a great cheering and yelling occurred by the crowd immediately opposite the entrance, and afterwards the crowd yelled "Hurrah for Dorsey", and the volume of the yells were so great that they could have been heard many blocks away; that they threw up their hats and gave other demonstrations; that at the time of the yelling, the jury was just crossing the street toward the German Cafe, not fifty feet away from the entrance, and in the opinion of deponent must have heard the cheering and the words "Hurrah for Dorsey", because they could be plainly heard; that he was in his office on Saturday, Aug. 23, when the jury came out of the court house at about one o'clock, and he heard yelling and cheering when Mr. Dorsey appeared a few minutes afterwards. Deponent did not see the jury at the time of the yelling, but it occurred so soon after the jury came out of the court house that in the opinion of deponent the jury must have heard the cheering and the words that were yelled; that since the trial has been in progress, he has heard several parties making threats of personal violence against the accused in the event of an acquittal; that these parties were loitering in and around the court house entrance and making threats that if the jury did not hang Frank, that they would pay the jury the compliment of sitting on the case, and if the jury did not do its duty, they would; that deponent recalls the names of R.W. Miller, Richard Dutton; that Miller loitered continuously around the court house entrance and circulated among the crowd.

D. Rozinsky makes the following affidavit deposing and saying as follows: That on Friday, Aug. 22nd, and Saturday, Aug. 23, he was standing near the corner of Hunter and So. Pryor Streets, in the City of Atlanta, Ga., and that when the Solicitor General, H.M. Dorsey, came out of the Old City Hall Building, now used as a court house, there was loud and vociferous cheering by the assembled crowd; that members of the crowd took the Solicitor in their arms and carried him across the street to the Kiser Building.

Mack Farkas, B.W. Simon, Sam Farkas, make the following affidavit: that the order set out below was taken by A.H. Henslee, in person, a traveling salesman for Franklin Buggy Co.; that said order was taken on July 8, 1913; the name A.H. Henslee on said order is the handwriting and signature of A.H. Henslee. The order referred to above was as follows: "July 8, 1913. Franklin Buggy Company, Inc. "Improved Barnesville Buggy". At once Ship to Sam Farkas, Albany, Ga., certain buggies (described in detail) Salesman: (Signed) A.H. Henslee. (Signed) Sam Farkas, by B.W. Simon."

J.J. Ricker and W.L. Nunnally, of Monroe, Georgia, make the following affidavit, deposing and saying as follows: that they have seen in the public prints that one of the jurors, A. H. Henslee,

in the Frank case, admits having made certain statements as to Frank's guilt of the murder of Mary Phagan, but says these statements were made after the trial of Leo M. Frank, and not before; they say that so far as they know, the said Henslee has not been in Monroe, Georgia, since the trial of Leo M. Frank, and they reiterate the statement that all statements made in their hearing by said Henslee, and testified about by these deponents on September 27, 1913, were made before the commencement of the trial of Leo M. Frank for the murder of Mary Phagan on July 28th, 1913; to the best of these deponents' recollection, these statements were made in June, 1913, although as to the exact month, these deponents say not.

Julian A. Lehman makes the following affidavit, deposing and saying as follows: that he makes this affidavit for use in motion for new trial in above stated case; that he reiterates his statement heretofre made under oath that between the time of the murder of Mary Phagan, as reported by the newspapers, and the commencement of the trial of Leo M. Frank, on July 28, 1913, he, on two occasions, heard A. H. Henslee, a juror in said case, express himself firmly and positively as to the guilt of Leo M. Frank of the murder of Mary Phagan, in the language set forth in the affidavit heretofore made by this deponent and attached to the original motion for new trial in said case; one of said times was on or about June 20, 1913, another time was early in the month of June, to the best of this deponent's recollection near June 2nd, but as to the exact date this deponent cannot state.

Leon Harrison makes the following affidavit, deposing and saying as follows: that he is not acquainted with Leo M. Frank, is not related to him, and has never seen him to know him; he says on oath that he is not personally acquainted with A.H.Henslee, but he knows that said Henslee is the party about whom he makes this affidavit; that during the month of May, 1913, deponent was walking from Scherrer's lunch place on Peachtree Street, toward Five Points, when he was attracted by a conversation between two men, one of whom was said A. H. Henslee; the same Henslee that served on the Frank jury and whose picture appeared in the Atlanta Georgian of August 26th, 1913, page 2, a clipping of which papers is hereto attached; that at

the time, which was shortly after the Mary Phagan murder, almost everyone was discussing the murder, and this deponent was very much interested in the matter, as was everyone else; this deponent heard the man with Henslee say to Henslee "I don't believe Frank committed that murder; if he did, he is one Jew in a million, not one Jew in a million would committ such a crime"; and to this statement said Henslee replied in deponent's hearing: "I believe he did kill the girl, and if by any chance I get on the jury that tries him, I'll try my best to have him convicted." The above statement of Henslee was in reference to Frank's guilt of the murder of Mary Phagan

The following persons make the following affidavit: R. C. Knight, Ex-Ordinary, H. G. Howell, Sol. City Court, O. Roberts, Atty, J. B. Shelnutt, Clerk Walton Superior Court, Alonzo C. Stone, Judge City Court of Monroe, deposing and saying as follows: that they are personally acquainted with J. J. Nunnally and W. L. Ricker, and that said Nunnally and Ricker are each men of the highest personal and moral character and reputation, and that they are each entirely trustworthy, and worthy of belief, as to any statement made by them, or each of them.

The following persons make the following affidavit: W. H. Burwell, Henry H. Little, Ordinary, Frank L. Little, Chmn. Board of Education, Sparta, T. M. Hunt, H. D. Chapman, Tax Collector, H. Co., Thos. F. Fleming, H.L. Middlebrooks, Cashier 1st Natl. Bank, G. W. Brier, Mayor of Sparta, R. E. Wheeler, Cashier Sparta Savings Bank, D. E. Wiley, Clerk Superior Court, A. H. Birdsong, Treas. H. Co., E. A. Rozier, Sr., Pres. Bank of Sparta, J. D. Bennett, Cashier Bank of Sparta, T. B. Hightower, Sheriff H. Co., deposing and saying as follows that they are personally acquainted with Jno. M. Holmes, Shi Gray, and S. M. Johnson, and that said Holmes, Gray and Johnson are each men of the highest personal and moral character, and reputation, and that they are each entirely trustworthy and worthy of belief, as to any statement made by them or each of them.

The following persons make the following affidavit, depsaing and saying as follows: W. F. Upshaw, S. E. Berman and Henry M. Kennedy,

that they are personally acquainted with Julian A. Lehman; and that said Lehman is a man of the highest personal and moral character, and reputation, and that he is entirely trustworthy, and worthy of belief, as to any statement made by him.

C.W.Mizell and R. P. Spencer, Jr. make the following affidavit, deposing and saying as follows: that they are personally acquainted with Julian A. Lehman, and that said Lehman is a man of the highest personal and moral character, and reputation, and that he is entirely trustworthy and worthy of belief, as to any statement made by him.

A. L. Guthman, L. P. Stephens, A. H. Van Dyke make the following affidavit, deposing and saying as follows: t hat they are personally acquainted with C. P. Stough, of Atlanta, Fulton County, Georgia, and that they know him to be a man of high personal character entirely trustworthy and absolutely worthy of belief, as to any statement made by him, whether on oath or otherwise.

W. W. Little makes the following affidavit, deposing and saying as follows: that he was head clerk at the New Albany Hotel (Albany Hotel Company, Proprietors), located at Albany, in said State and County, all during the months of June, July and August, 1913, and for several years prior to that time; and that attached hereto, marked exhibit "A", is the register of guests at said hotel from the 20th dayy of June, 1913, to the 31st day of August, 1913; and that there was no other register of guests used at said hotel during the period above stated;

Deponent further says that on the third page of said register of guests, under date of July 8, 1913 (contd 7/8/13), on the second line from the top, is the signature of A. H. Henslee, address "Atlanta, U.S.A., assigned to room 79 in said hote; and deponent says further that he was the clerk on duty at said hotel at the time the sadd Henslee registered his said name on said register, and was a guest at said hotel dnring that day; and deponent says further that he is personally acquainted with the said Henslee.

Deponent says further that he is aware and has knowledge that this affidavit is to be used as evidence in the hearing of the motion for a new trial in the case of the State of Georgia vs. Lee M.

Frank, which is now pending in the Superior Court of Fulton County, Georgia.

Leo M. Frank makes the following affidavit, deposing and saying as follows; that he is the defendant above named; that he did not know, nor has he ever heard until the end of his trial in the above stated case, that A. H. Henslee and Marcellus Joehenning had any prejudice or bias against deponent, nor that they, or either of them, has ever said or done anything indicating that they believed in deponent's guilt, or had any prejudice or bias against deponent.

Shi Gray deposes and states by interrogatories issued under Section 5918 and 5919 of the Code of 1910, as follows: I have examined clipping from the Atlanta Georgia of August 26, 1913, showing a picture of the jury in the above stated case, and showing a likeness of Juror A. H. Henslee. I am personally acquainted with A. H. Henslee, I heard A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan. In a conversation in Walker & Holmes Insurance office, some one asked Henslee whether he, Henslee thought Frank was guilty of the murder of Mary Phagan. Henslee answered in the affirmative. The answer given by Henslee was stated positively and firmly. The conversation lasted from about 20 minutes to half an hour. All of us were talking. Henslee asked Mr. Holmes and Mr. Johnson and others. The whole conversation at the time with Henslee was on the proposition as to whether or not Leo M. Frank was guilty of the murder of Mary Phagan. This conversation took place before the trial of Frank, and it was in the insurance office ofWalker & Holmes. I did hear A. H. Henslee state, in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank, for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan. I heard him say he was summoned as a juror in the came conversation already testified about. I am a dealer in live stock.

S. M. Johnson deposes and states by interrogatories issued under sections 5918 and 5919 of the Code of 1910, as follows: I have examined clipping from the Atlanta Georgian of August 26, 1913,

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showing a picutre of the jury in the above stated case, and showing a likeness of Juror A. H. Henslee. I know A. H. Henslee by sight. I have heard A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan. Several parties were talking. Some said they thought Leo M. Frank was guilty of the murder of Mary Phagan, others said they did not. Henslee stated his conviction that Frank was guilty of the murder of Mary Phagan. He did this firmly andpositively. This took place in Walker & Holmes' office about the last of June, 1913. I heard A. H. Henslee state, in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan. A. H. Henslee said he had been drawn as a juror and might have to serve. I work for Walker & Holmes.

John M. Holmes deposes and states by interrogatories issued under sections 5918 and 5919 of the Code of 1910, as follows: I have examined the clipping from the Atlanta Georgia of August, 26, 1913, showing a picture of the jury in the above stated case and showing a likeness of Juror A. H. HEnslee. I am personally acquainted with A. H. Henslee. I heard A H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder ofMary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan. Several men were in my office. Mr. Henslee was asked th question whether or not he believed Leo M. Frank was guilty of the murder of Mary Phagan. He stated that he did. He stated this positively and firmly. This took place in Walker & Holmes' Insurance office on the morning of June 27th, 1913. I heard A. H. Henslee state in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of themurder of Mary Phagan. Henslee stated that he had been summoned as a juror. I am a member of the firm of Walker & Holmes, real estate and insurance.

C. P. Stough deposes and states by interrogatories issued under sectfons 5918 and 5919 of the Code of 1910, as follows:

I know A. H. Henslee, who served on the jury in the above stated case at the trial commencing July 28, 1913. I have known him about six or seven years. About the time that Conley was reported to have made a statement, I was coming into the city on a street car from the home of my daughter. Henslee was also on the car. I heard him say this, in reference to Leo M. Frank's guilt of the murder of Mary Phagan: "I think he is guilty and I would like to be in a position where I could help break his damned neck." This statement was most positive. He was as positive as I was, and I was as positive as I could be in what I said in the conversation. This statement was made on a College Park Street car, coming into the city. I am inspector for the Mason's Annuity.

W.L.Ricker deposes and states by interrogatories issued under sections 5918 and 5919 of the Code of 1910, as follows: I have examined the clipping from the Atlanta Georgian of August 23,1913, and particularly the likeness in said clipping of A. H. Henslee. I know A. H. Henslee. Henslee was in Monroe, Georgia, between the time of the murder of Mary Phagan, as reported in the papers, and the time of the commencement of the trial of Leo M. Frank, for the murder of Mary Phagan, to-wit: July 28th, 1913. I heard A. H. Henslee make statements in connection with the guilt of Leo M. Frank of the murder of Mary Phagan. He talked for some time in the store of Nunnally & Harris, and stated that Leo M. Frank was guilty of the murder of Mary Phagan. He denounced Frank bitterly and vehemently, and made this statement about Frank in my hearing: He said, "They are going to break that Jew's neck." This was stated most bitterly and positively. Yes, he said that Frank was guilty. Mes, A. H. Henslee, in Monroe, Georgia, between said dates, in my presence, and hearing, said he thought Leo M.Frank was guilty of the murder of Mary Phagan; and he was bitter. I was only present about 20 minutes. He was talking all the time I was there and stating that Frank was guilty of the murder of Mary Phagan. J.J.Nunnally and some others whose names I do not/now recall, were also present. I am a dentist practicing about seven years. I am a graduate of Atlanta Dental College.

J. J. Nunnally deposes and states by interrogatories issued under sections 5918 and 5919 of the Code of 1910, as follows: I have examined the attached clipping from the Atlanta Georgian of August 23,

1913, and particularly the likeness of A. H/ Henslee. I know A. H. Henslee. A. H. Henslee was in Monroe, Georgia, between the time of the murder of Mary Phagan, as reported in the papers, and the time of the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, to-wit, July 28, 1913. What impressed me was that Henslee was the most vehement in his expression as to the guilt of Leo M. Frank of the murder of Mary Phagan, of any person I had heard talk about it. The Phagan murder was, at the time, the particular topic of conversation generally, a great many people were discussing it, and many were denouncing Frank as guilty, particularly travelling men. Henslee was the most bitter of any. For about two and a half hours, in my place of business, Henslee argued Frank's guilt in the murder case; in talking about the outcome of the case, he made the statement, which, to the best of my recollection was, that if the jury should turn Frank out, he (Frank) would not get out of Atlanta alive. Yes, he believed Frank guilty. Henslee was very vehement as stated; there was no doubt from what he said that it was his conviction that Frank was guilty. I only recall that, to the best of my recollection, he said that if the jury did turn Frank loose, Frank would never get away alive. Henslee discussed the guilt of Leo M. Frank in Monroe, Georgia, about two and one half hours, according to my recollection. He made the statement repeatedly, it might have been only two hours. Dr. W. L. Ricker, and at times during the period, there were others; but the names I don't recall, were also present. My partner, Mr. Harris, was out of the city. I am a member of the firm of Nunnally & Harris, composed of J. J. Nunnally and Virgil Harris, dealers in buggies, wagons and live stock. Also Vice-President of W. H. Nunnally & Company, general supplies and merchandise.

The court also considered the following affidavits as a counter showing presented by the State, to-wit:

F. E. WINBURN, makes affidavit deposing and saying as follows:

That I was a juror on the Frank case; I did not know personally either A. H. Henslee or M. Joehenning, who were also jurors trying this case, until after we were sworn in on said jury; I had occasion to and do know the conduct of these two men on the jury; at no time did either of them express themselves in a way to indicate that they were in the least bit prejudiced or biased, against the defendant, Leo M. Frank, but each of these men, as did each and every other member of the jury, deport themselves as honest, upright, prudent, and impartial jurors; if either the said A. H. Henslee or the said M. Joehenning believed that Frank was guilty until after the entire case had been heard and concluded and submitted to the jury, they at least did not so express themselves, or give vent to any other expressions whithin my hearing or knowledge, indicating any bias or prejudice against the said Frank. I did notknow how A. H. Henslee stood on the issue until after the first ballot had been taken; then said Henslee made a talk and stated that he had cast a doubtful ballot; there was one ballot marked "doubtful"; he explained to the jury why he cast this doubtful ballot, and submitted some suggestions with reference to the evidence. Up to that time, so far as I know, said Henslee had not intimated or expressed any opinion whatsoever with reference to any feature of the case. As to M. Joehenning during the entire twenty-nine days that we were together as jurors, he did not, so far as I know, say or in any way intimatehow he stood on the issue; so far as I was able to judge from his conduct and deportment; said Joehenning was an upright, honest, fair, prudent, impartial and conscientious juror, imbued with only one purpose, viz. the ascertainment of the truth; what is said above as to the impartiality, fairness and conscientiousness of Joehenning is ture of Henslee and likewise of each and every man on the jury. I did not at any time, while a juror, hear any applause except such as occurred in open court, and which was heard by thejudge, jury and attorneys in the case; I did not know that there had been any cheering of anybod

connected with the case,at any time, or that there had been any cheering in any way growing out of or connected with the Frank case, until after the verdict was rendered, and I was told about said incidents; the juryleft the courtroom every time before the judge, lawyers, and audience were permitted to leavem and there was never any applause or cheering either inside the court or outside of the court, within my knowledge, while the case was being considered; the jury, in leaving were always attended by the deputy sheriffs or bailiffs, one always going in front and one always in the rear; we were usually taken direct from the courthouse to the German Cafe, located midway of the block on Pryor Street, opposite from the courthouse, and it took only a very short time to go there, - I should estimate about three minutes at the outside; upon reaching the German Cafe, we were taken directly to a private dining room in the rear of the building and the door immediately closed; after being shut up in this room, we never heard any sounds that in the slightest resembled cheering or appluase; the only cheering that we heard at any time while the case was being considered was the cheering that arose shortly after the verdict of guilty was read, when there was cheering both on Hunter and Pryor Streets, and said cheering was loud and long. With the exception of this cheering, I never heard anything that had the slightest resemblance to cheering, and I never heard any applause except that heard by the judge and only heard about the cheering after having been discharged from the case. THAT the cheering which occurred just after the reading of the verdict in said case occurred during the time the jurors were being polled by the court. THAT at the time the cheering was heard no objection whatever was made by any one representing Leo.M.Frank, or by the said Leo M.Frank himself, nor was any motion made at the time by any of the attorneys of the said Frank or by the said Frank himself, but the polling of the jury which was going on at the time the cheering began and during the cheering and after the cessation of the cheering, was continued.

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THAT this cheering did not in anywise influence or affect the verdict which had already been made, nor did it have any influence whatsoever. THAT deponent remained absolutely unaffected and uninfluenced by the cheering or the surroundings and in answering on the poll, deponent truthfully answered after he had heard the cheering that it was his verdict and in so answering sustaining the verdict, he discharged his duty and now subscribes to the correctness of the verdict as rendered. THAT neither on Saturday, August 23, 1913, nor on any other day or date, did any man or men other than the bailiffs in charge of the jury ever walk with or by the side of the jury, and neither did anybody, within my knowledge, ever speak to any juror at any time or place outside of the presence of the court. THAT if at any time any man ever grabbed any juror by the hand or held any conversation with any juror, the same was not in my presence; no man ever grabbed me by the hand at the place referred to by W. P. Neill in his affidavit, nor did I see or hear or know anything about any man grabbing any member of the jury by the hand or saying anything to any juror, or attempting to say anything to any juror, and within my knowledge there was no communication at any time or place or in any shape, manner or form, with any juror, with any party on the outside. All communications had by the jury with outsiders, so far as I know, were through the bailiffs, and said communications were authorized by the court and known to counsel on both sides of the case. THAT so far as I am personally concerned, and so far as I know as to each and every juror on the case, they were influenced solely and alone by the evidence and the charge as given by the court, and were not influenced in anywise, in any way, manner, shape or form, by anything from the outside, but the verdict as rendered so far as I am concerned, and as to the other jurors, so far as their deportment shows, I believe was rendered from an honest opinion, based on the law and evidence of the case.

D. TOWNSEND makes affidavit, deposing and saying as follows:

THAT he was one of the jurors who served on the above stated case and heard the cheering which followed soon after the reading ofnthe verdict of guilty in open court and which said cheering was by parties outside of the court, and which cheering occurred during the time the jury were being polled in court: THAT at the time the cheering was heard, no objection whatsoever was made by anyone representing Leo M. Frank or by Leo M. Frank himself nor was any motion made at the time by any of the attorneys of said Frank or by said Frank, but the polling of the jury which was going on at the time the cheering began during the cheering and after the cessation of the cheering, was continued: THAT this cheering did not in anywise influence or affect the verdict which had already been made, nor did it have any influence whatsoever: THAT I remained absolutely unaffected and uninfluenced by the cheering or the surroundings and in answering on the poll, I truthfully answered after I had heard the cheering, that it was my verdict and in answering sustaining the verdict, I discharged my duty as a conscientious juror and now subscribe to the correctness of the verdict as rendered.

M. L. WOODWARD, makes affidavit, deposing and saying as follows:

THAT I was a juror on the Frank case; I did not know personally either A. H. Henslee or M. Joehenning, who were also jurors trying this case, until after we were sworn in on said jury; I had occasion to and do know the conduct of these two men on the jury, at no time did either of them express themselves in a way to indicate that they were in the least bit prejudiced or biased against the defendant, Leo M. Frank, but each of these men as did each and every other member of the jury, deported themselves as honest, upright, prudent and impartial jurors; if either

the said A.H.Henslee or the said M.J°ehenning believed that Frank was guilty until after the entire case had been haerd and concluded and submitted to the jury, they at least did not so express themselves, or give vent to any other expression within my hearing or knowledge, indicating any bias or prejudice against the said Frank; I did not know how A.H.Henslee stood on the issue until after the first ballot had beentaken; then said Henslee made a talk and stated that he had casta doubtful balllt; there was one ballot marked "doubtful"; he explained to the jury why he cast this doubtfll ballot, and submitted some suggestions with reference to the 3vidence; up to that time, so far as I know, said Henslee had not intimated or expressed any opinion whatsoever with reference to any feature of the case: THAT as to M.J°ehenning; during the entire twenty-nine days that we were together as jurors, he did not so far as I know, say or in any way intimate how he stood on the issue; so far as I was able to judge from his conduct and deportment, said Joehenning was an upright, honest, fair, prudent, impartial and conscientious juror, imbued with only one purpose, viz., the ascertainment of the truth; what is said above as to the impartiality, fairness and conscientiousness of Joehenning is true of Henslee and likewise of each and every man on the jury: THAT I did not at any time, while a juror, hear any applause except such as occurred in open court, and which was heard by the judge, jury and attorneys in the case; I did not know that there had been any cheering of anybody connected with the case at any time or that there had been any cheering growing out of or connected with the Frank case, until after the verdict was rendered, and I was told about said incidents; the jury left the courtroom every time before the judge, lawyers, and audience were permitted to leave, and there was never any applause or cheering wither inside of the xourtroom or outside of the court, within my knowledge, while the case was being considered; the jury, in leaving, were always attended by the deputy sheriffs or bailiffs, one always going in front and one always in

the rear;
THAT we were usually taken direct from the courthouse to the German Cafe, located midway of the block on Pryor Street, opposite from the courthouse, and it took only a very short time to go there - I should estimate about three minutes at the outside. Upon reaching the German Cafe, we were taken directly to a private dining room in the rear of the building and the door immediately closed; after being shut up in this room, we never heard any sounds that in the slightest resembled cheering or applause; the only cheering that was heard at any time while the case was being considered was the cheering that arose shortly after the verdict of guilty was read, when there was cheering both on Hunter and Pryor Streets, and said cheering was loud and long; with the exception of this cheering, I never heard anything that had the slightest resemblance to cheeding, and I never heard any applause except that heard by the judge and only heard about the cheering after having been discharged from the case. THAT thet cheering which occurred just after the reading of the verdict in said case occurred during the time the jurors were being polled by the court. THAT at the time the cheering was heard no objection whatsoever qas made by any one representing Leo M.Frank or by the said Leo M.Frank himself, nor was any motion made atthe time by any of the attorneys of the said Frank or by the said Frank himself, but the polling of the jury which was going on at the time the cheering began and during the cheering and after the cessation of the cheering, was continued. THAT this cheering did not in any wise influence or affect the verdict which had already beenmade, nor did it have any influence whatsoever; THAt deponent remained absolutely unaffected and uninfluenced by the cheering or the surroundings and in answering on the poll, deponent truthfully answered after he had heard the cheering that it was his verdict and in somanswering sustaing the verdict, he discharged his duty and now subscribes to the correctness of the verdict as rendered. THAT neither on Saturday, August 23, 1913, nor on any other day or date, did any man or men, other than the bailiffs in charge of the jury ever walk with or

by the side of the jury, and neither did anybody within my knowledge, ever speak to any juror at any time or place outside of the presence of the court. THAT if at any time any man ever grabbed any juror by the hand or held any conversation with any juror, the same was not in my presence; no man ever grabbed me by the hand at the place referred to by W. P. Neill in his affidavit nor did I see or hear or know anything about any man grabbing any member of the jury by the hand or saying anything to any juror, or attempting to say anything to any juror, and within my knowledge there was no communication at any time or place or in any shape, manner, or form, with any juror with any party on the outside; all communications had by the jury with outsiders, so far as I know, were through the bailiffs, and said communications were authorized by the court and known to counsel on both sides of the case. THAT so far as I am personally concerned, and so far as I know as to each and every juror on the case, they were influenced solely and alone by the evidence and the charge as given by the court, and were not influenced in anywise , in any way, manner, shape, or form, by anything from the outside, but the verdict was rendered, so far as I am concerned, and as to the other jurors, so far as their deportment shows, I believe was rendered from an honest opinion based on the law and evidence of the case.

D. TOWNSEND makes affidavit, deposing and saying as follows:

THAT I was a juror on the Frank case; I did not know personally either A. H. Henslee or M. Joehenning who were also jurors trying this case, until after we were sworn in on said jury; I had occasion to and do know the conduct of these two men on the jury; at no time did either of them express themselves in a way to indicate that they were in the least bit prejudiced or biased, but each of these men, as did each and every other member of the jury, deported themselves as honest, upright, prudent and impartial jurors;nor did either the said A.H.Henslee or the said M. J. Joehenning believed that Frank was guilty until after the entire case had

been heard and concluded and submitted to the jury, they at least did not so express themselves, or give vent to any other expression within my hearing or knowledge, indicating any bias or prejudice against the said Frank; I did not know how A.H. Henslee stood on the issue until after the first ballot had been taken; then said Henslee made a talk and stated that he had cast a doubtful ballot; there was one ballot marked "doubtful"; he explained to the jury why he cast this doubtful ballot and submitted some suggestions with reference to the evkdence; up to that time, so far as ZI know, said Henslee had not intimated or expressed any opinion whatsoever with reference to any feature of the case:: THAT as to M.J. Schenning; during the entire twenty-nine days that we were together as jurors, he did not, so far as I know, say or in any way intimate how he stood on the issue; so far as I was able to judge from his conduct and deportment, said J. Schenning was an upright, honest, fair, prudent, impartial and conscientious juror, imbued with only one purpose, viz., the ascertainment of the truth; what is said above as to the impartiality, fairness and conscientiousness of ZJoehenning is true of Henslee and likewise of each and every man on the jury:: THAT I did not at any time, while a juror, hear any applause except such as occurred in open court, and which was heard by the judge, jury and attorneys in the case; I did not know that there had been any cheering of anybody connected with the case at anu time or that there had been any cheering in any way growing out of or connected with the Frank case, until after the verdict was rendered, and I was told about said incidents; the jury left the courtroom every time before the judge, lawyers and audience were permitted to leave, and there was never any applause or cheering either inside of the court or outside of the court, within my knowledge, while the case was being considered; the jury in leaving, were always attended by thedeputy sheriffs or bailiffs, one always going before and one always in the rear; we were usually taken direct from the courthouse to the German Cafe, located midway of the block on Pryor Street

opposite from the courthouse, and it took only a very short time to go there - I should estimate about three minutes at the outside. Upon reaching the German Cafe, we were taken directly to a private dining room in the rear of the building and the doer immediately closedl after heing shut up in this room, we never heard any sounds that in the lsightest resembled cheering or applause; the only cheering that was heard at any time while the case was being considered was the cheering that arose shortly after the verdict of guilty was read, when there was cheering both on Hunter and Pryor Streets, and said cheering was liud and long; with the exception of this cheering, I never heard anything that had the slightest resemblance to cheering and I never heard any applause except that heard by the judge and only heard about the cheering after having been discharged from the case: THAT neither on Saturday, August 23, 1913, nor on any other day or date, did any man or men other than the bailiffs in charge of the jury, ever walk with or by the side of the jury, neither did anybody, within my knowledge, ever speak to any juror at any time or place outside of the presence of the court: THAT if at any time any man ever grabbed any juror by the hand or held any conversation with any juror, the same was not in my presence; no man ever grabbed me by the hand at the place referred to by W.P.Neill in his affidavit, nor did I see or hear or know anything about any man grabbing any member of the jury by the hand or saying anything to any juror, or attempting to say anything to any juror, and within my knowledge, there was no communication at any time or place or in any shape, manner or form, with any juror, with any party outside; all communications had by the jury with oyttsiders, so far as I know, were through the bailiffs, and said communications were authorized vy the court and known to counsel on both sides of the case;; THAT so far as I am personally concerned, and so far as I know as to each and every juror on the case, they were influenced solely and alone by the evidence and the charge as given by the court, and were not infouenced in any wise, in any way, manner, shape, or form, by anything from the outside, but the verdict as rendered

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was, so far as I am concerned, and as to the other jurors, so far as their deportment shows, I believe was rendered from an honest opinion, based on the law and evidence of the case.

A. L. WISBEY makes affidavit, deposing and saying as follows:

THAT I was a juror on the Frank case; I did not know personally either A. H. Henslee or M. Joehenning, who were also jurors trying this case, until after we were sworn in on said jury; I had occasion to and do know the conduct of these two men on the jury; at no time did either of them express themselves in a way to indicate that they were in the least bit prejudiced or biased, but each of these men, as did each and every other member of the jury, deported themselves as honest, upright, prudent and impartial jurors; if either the said A. H. Henslee or the said H. Joehenning believed that Frank was guilty until after the entire casehad been heard and concluded and submitted to the jury, they at least did not so express themselves, or give vent to any other expression within my hearing or knowledge, indicating any bias or prejudice against the said Frank; I did not know how A. H. Henslee stood on the issue until after the first ballot had been taken; then said Henslee made a talk and stated that he had cast a doubtful ballot; there was one ballot marked "doubtful"; he explained to the jury why he cast this doubtful ballot, and submitted some suggestions with reference to the evidence. Up to that time, so far as I know, said Henslee had not intimated or expressed any opinion whatsoever with reference to any feature of the case: THAT as to M. Joehenning; during the entire twenty-nine days that we were together as jurors, he did not, so far as I know say or in any way intimate how he stood on the issue; so far as I was able to judge from his conduct and deportment, said Joehenning was an upright, honest, fair, prudent, impratial and conscientious juror, imbued with only one purpose, viz., the ascertaining of the truth; what is said above as to the impartiality, fairness and conscientiousness of Joehenning is true

of Henslee and likewise of each and every man on the jury: THAT I did not at any time, while a juror, hear any applause except such as occurred in open court, and which was heard by the judge, jury and attorneys in the case; I did not know that there had been any cheering or anybody connected with the case at any time ot that there had been any cheering in any way growing out of,or connected with the Frank case, until after the verdict was rendered, and I was told about said incidents. THAT on oneoccasion - I have forgotten the exact date - when the jury wase opposite the old Union DepotnStation, which is about two blocks from the courthouse, I heard faintly and indefinitely what I thought might be cheering; it was not distinct; what I heard I considered at the time was in the vicinity of the courthouse; I did not know, as above stated, what was the occasion of the cheering, either at that time or at any other time, until after I was discharged as a juror: THAT the jury left the courtroom every time before the judge, lawyers and audience wer permitted to leave, and there was never any applause or cheering either inside of the court or outside of the court, within my knowledge, while the case was being considered; the jury in leaving, were always attended by the deputy sheriffs or bailiffs one always going in front and one always in the rear; we were usually taken direct frm the courthouse to the German Cafe, located midway of the block on Pryor Street, opposite from the courthouse, and it took only a very short time to go there - I should estimate about three minutes at the outside; upon reaching the German Cafe we were taken directly to a private dining room in the rear of the building and the doorimmediately closed; after being shut up in this room, we never heard any sounds that in the slightest resembled applause or cheering; the only cheering that was heard at any time while the case was being considered was the cheering that arose shortly after the verdict of guilty was read; when there was cheering both on Hunter and Pryor Streets, and said cheering was loud and long. With the exception of this cheering, I never heard

anything that had the slightest resemblance to cheering, and I never heard any applause except that heard by the judge and only heard about the cheering after having been discharged from the case: THAT neither on Saturday, August 23, 1913, nor on any other day or date, did any man or men other than the bailiffs in charge of the jury ever walk with or by the side of the jury, and neither did anybody within my knowledge, ever speak to any juror at any time or place outside of the presence of the court: THAT if at any time any man ever grabbed any juror by the hand or held any conversation with any juror, the same was not in my presence; no man ever grabbed me by the hand at the place referred to by W. P. Neill in his affidavit, nor did I see or hear or know anything about any man grabbing any member of the jury by the hand or saying anything to any juror or attempting to say anything to any juror, and within my knowledge, there was no communication at any time or place in any shape, manner or form, with any juror, with any party on the outside; all communications had by the jury with outsiders, so far as I know, were through the bailiffs, and said communications were authorized by the court and known to counsel on both sides of the case; THAT so far as I am personally concerned, and so far as I know, as to each and every juror on the case, they were influenced solely and alone by the evidence and the charge as given by the court, and were not influenced in anywise, in any way, manner, shape, or form, by anything from the outside, but the verdict as rendered, so far as I am concerned, and as to the other jurors, so far as their deportment shows, I believe was rendered from an honest opinion, based on the law and evidence of the case.

W. M. JEFFRIES makes affidavit deposing and saying as follows:

THAT I was a juror on the Frank case; I did not know personally either A. H. Henslee or M. Joehenning, who were also jurors, trying this case, until after we were sworn in on said jury; I had occasion to and do know the conduct of these two men on the jury; at no time did either of them express themselves

in a way to indicate that they were the leawt bit prejudiced or biased, but each of these men, as did ecah and every other member of the jury, deported themselves as honest, upright, prudent and impartial jurors; if either thesaid A.H.Henslee or the said M.J. Oehenning believed that Frank was guilty until after the entire case had been heard and concluded and submitted to the jury, they at least did not so express themselves, or give vent to any other expression within my hearing or knowledge, indicating any bias or prejudice against the said Frank; I did not know how A.H.Henslee stood on the issue until after the first ballot had been taken; then said Henslee made a talk and stated that he had cast a doubtful ballot; there was one ballot marked "doubtful"; he explained to the jury why he cast this doubtful balllt, and submitted some suggestions with reference to the evidence; up to that time, so far as I know, said Henslee had not intimated or expressed any opinion whatsoever with reference to any feature of the case: THAT as to M.J. Oehenning; during the entire twenty-nine days that we were together as jurors, he did not, so far as I know, say in any way or intimate how he stood on the issue; so far as I was able to judge from his conduct and deportment, said Joehenning was an upright, honest, fair, prudent, impartial and conscientious juror, imbued with only one purpose, viz., the ascertaining of the truth; what is said above as to the impartiality, fairness and conscientiousness of Joehenning is true of Henslee and likewise of each and every man on the jury. THAT I did not at any time, while a juror, hear any applause except such as occurred in open court, and which was heard by the judge, jury and attorneys in the case; I did not know that there had been any cheering of anybody comected with the case at any time or that there had been any cheering in any way growing out of or connected with the Frank case, until after the verdict was rendered, and I was told about said incidents; the jury left the courtroom before the judge, lawyers, and audience

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were permitted to leave, ad there was never any applause or cheering either inside of the court or outside of the court within my knowledge, while the case was being considered; the jury, inleaving, were always attended by the deputy sheriffs or bailiffs, one always going in front and one always in the rear; we were usually taken direct from the courhouse to the German Cafe, located midway of the block on Pryor Street, opposite from the courthouse, and it took only a very short time to go there - I should estimate about three minutes - at the outside; upon reaching the German Cafe we were taken directly to a private dining room in the rear of the building and the door immediately closed; after being shut up in this room we never heard any sounds that in the slightest resembled applause or cheering; the only cheering that was heard at any time while the case was being considered was the cheering that arose shortly after the verdict of guilty was read, when there was cheering both on Hunter and Pryor Streets and said cheering was loud and long; with the exception of this cheering, I never heard anything that had the slightest resemblance to cheering, and I neverheard any applause except that heard by the judge and only heard about the cheering after having been discharged from the case:: THAT neither on Saturday, August 23, 1913 nor on anu other day ormdate, did any man or men other than the bailiffs in charge of the jury ever walk with or by the side of the jury, and neither did xx anybody, withing my knowledge, ever speak to any juror at any time or place outside of the presence of the court::THAT if at any time any man ever grabbed any juror by the hand or held any conversation with any juror, the same was not in my presence. No man ever grabbed me by the hand at the place referred to by W.P.Neill in his affidavit, nor did I see or hear of xxx know anything about any man grabbing any member of the jury by the hand

or saying anything to any juror, or attempting to say anything to any juror, and within my knowledge, there was no communication at any time or place or in any shape, manner or form with amy juror, with any party on the outside; all communications had by the jury with putsiders, so far as I know, were through the bailiffs and said communications were authorized by the court and known to counsel on both sides of the case::THAT so far as I am personally concerned, and ao far s I know as to each and every juror on the case, they were influenced solely and alone by the evidence and the charge asgiven by the court and were not influenced in any wise in any way manner shape or form, by anything from the outside, but the verdict as rendered, so far as I am concerned, and as to the other jurors, so far as their deportment shows, I believe was rend ered from and honest opinion, based on the law and evidence of the case.

M.JOEHENNING makes affidavit, deposing and saying as follows:

THAT I was a juror on the Frank case; I did not know personally A.H.Henslee, who was also a juror trying this case until after we were swern in on said jury; I had occasion to know and do know his conduct on the jury; at no time did he express himself in a way to indicate that he was the least bit prejudiced or biased, but Henslee, as did each and every other member of the jury, deported himself qs an honest, upright, prudent, and impartial juror; if A.H.Henslee believed that Frank was guilty until after the entire case had been haard and concluded and submitted to the jury, he at least did not so express himself or give vent to any other expression within my hearing or knowledge, indicating any bias or prejudice against the said Frank; I did not know how A.H.Henslee stood on the issue until after the first ballot had been taken; then said Henslee made a talk and stated that he had cast a doubtful ballot; there was one ballot marked "doubtful"; he explained to the jury why he cast this

doubtful ballot, and submitted some suggestions with reference to the evidence; up to that time, so far as I know, said Henslee had not intimated or expressed any opinion whatsoever with reference to any feature of the case:: THAT I did not at any time while a juror, hear any applause except such as occurred in open court, and which was heard by the judge, jury and attorneys in the case; I did not know that there had been any cheering of anybody connected with the case at any time or that there had been any cheering in any way growing out of or connected with the Frank case, until, after the verdict was rendered and I was told about said incidents:. THAT on the Monday the verdict was rendered, while we were in the jury room in the rear of the courthouse, waiting to be called into the courtroom at about nine o'clock, I heard a disturbance on the street which I thought was occasioned by some fight; I did not know that they were cheering anybody connected with the case; this is the only noise outside of the courtroom that in any way resembled cheering:: THAT the jury left the courtroom every time before the judge, lawyers and audience were permitted to leave, and there was never any applause or cheering either inside of the court or outside of the court, within my knowledge, while the case was being considered; the jury in leaving were always attended by the deputy sheriffs, one always going in front and one always in the rear; we were usually taken direct from the courthouse to the German Cafe, located midway of the block on Pryor Street, opposite from the courthouse, and it took only a very short time to go there - I should estimate about three minutes at the outside; upon reaching the German Cafe, we were taken directly to a private dining room in the rear of the building and the door immefiately closed; after being shut up in this room we never heard any sounds that in the slighest resembled cheering or applause; the only cheering that was heard at any time while the case was being considered was the cheering

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that arose shortly after the verdict of guilty was read, when there was cheering both on Hunter and Pryor Streets, and said cheering was loud and long; with the exception of this cheering, I never heard anything that had the slightest resemblance to cheering, and I never heard any applause except that heard by the judge andonly heard about the cheering after having been discharged from the case; THAT neither on Saturday, August 23, 1913, nor on any other day or date, did any man or men other than the bailiffs in charge of the jury, ever walk with or by the side of the jury, and neither did anybody, within my knowledge, ever speak to any juror at any time or placeoutside of the presence of the court: THAT if at any time any man ever grabbed any juror by the hand or held any conversation with any juror, the same was not in my presence; no man ever grabbed me by the hand at the place referred to by W.P.Neill in his affidavit, nor did I see or hear or know anything about any man grabbing any member of the jury by the hand or saying anything to any juror or attempting to say anything to any juror, and within my knowledge there was no communication at any time or place, or in any shape, manner or form, with any juror, with any party on the outside; all communications had by the jurors with outsiders, so far as I know, were through the bailiffs and said communications were authorized by the court and known to counsel on both sides of the case; THAT so far as I am personally concerned, and so far as I know as to each and every juror on the case, they were influenced solely and alone by the evidence and the charge as given by the court, and were not influenced in anywise, in any way, manner, shape, or form, by anything from the outside, but the verdict as rendered, was, so far as I am personally concerned, and as to the other jurors, so far as their deportment shows, I believe was rendered from an honest opinion, based on the law and evidence of the case; THAT I have read the affidavit of H.C.Lovenhart, sworn to on the 2nd day of September, 1913, before C.W.Burk; I deny positively and emphatically that I ever had any such conversation with said H.C.Lovenhart at any time or place; THAT I have read likewise the affidavits made by

Mrs.Jennie G.Lovenhart and Miss Miriam Lovenhart, both made before th the same Burk aforesaid and on the day aforesaid: THET the facts are these with reference to this: :THAT I deny ever having expressed to the said Lovenhart or any one else any opinion with reference to the guilt or innocence of said Frank, except as hereinafter set out: THAT some time about twp weeks before the Frank case was first set for trial - which, if my memory serves me right, was about the latter part of June, 1913 - I had a casual conversation with Mrs.Jennie G. and he daughter Miriam Lovenhart; the conversation was substantially as follows: THAT Mrs Lovenhart said to me "What do you think of the Frank case?", and I answered her, "By the papers they have found him guilty already" Then she said "I cannot look at it that way, I think he is innocent". Then the daughter spoke up and said "What do you think about it Mr.Joehenning"?, and I told the daughter that I thought he would have a hard time getting loose, that things did not look very bright for him. I said "I have only read the papers, and that is all I know about it" Then Mrs.Lovenhart said she was afraid that he would not get a fair trial. Then I said to her that it was little less than two weeks tillthe trial, then we would all know whether he was innocent or guilty. That was all that was said: THAT the said Lovenharts are of the same race and religion as Leo M.Frank: THAT I did not at that time entertain any fixed opinion as to the guilt of Leo M.Frank, ad what I said was merely acasual remark made in a casual conversation and as stated in the conversation, was prediated entirely upon newspaper reports; ~~I never arrived at, entertained, or expressed,~~ either to the Lovenharts or to any other person, either at the time and place referred to by them, or elsewhere, any settled or permanent opinion, and I distinctly stated that what I said was based simply upon newspaper reports, and was open-minded, to be governed, as I was, entirely by the evidence adduced.

J.T.OZBURN makes affiravit, deposing and saying as follows:

THAT I was a juror on the Frank case; I did not know personally either A.H.Henslee or M.Joehenning, who were also jurors trying this case, until after we were swoxn in on said jury; I had occasion to and do know the conduct of these two men on the jury; at no time dideither of them express themselves in a way to indicate that they were in the least bit prejudiced or biased, but each of these men, as did each and every other member of the jury, deported themselves as honest, upright, prudent and impartial jurors; if either the said A.H.Henslee or the said M.J^ehenning believed that Frank was guilty until after the entire case had been heard and concluded and submitted to the jury, they at least did not do express themselves, or give vent to any other expression within my hearing or knowledge, indicating any bias or prejudice against the said Frank; I did not know how A.H.Henslee stood on the issue until after the first ballot had been taken; then said Henslee made a talk and stated that he cast a doubtful ballot; there was one ballot marked "Dountful"; he explained to the jury why he cast this doubtful ballot and submitted some suggestions with reference to the evidence; up to that time, so far as I know, said Henslee had not intimated or expressed any opinion whatsoever with erefer ence to any feature of the case: THAT as to M.Joehenning; during the entire twenty-nine days we were together as jurors, he did not, so far as I know, say or in any way intimate how he stood on the issue; so far as I was able to judge from his conduct and deportment, said J^ehenning was an upright, honest, fair, prudent, impartial and conscientious juror, imbued with only one purpose, viz., the ascertainment of the truth; what is said above as to the impartiality, fairness and conscientiousness of Joehenning, is true of Henslee and likewise of each and every man on the jury. THAT I did not at any time, while a juror, hear any applause except such as occurred in open court, and which was heard by the judge, jury and attorneys in the case; I did not know that there

had been any cheering of anybody connected with the case at any time, or that there had been any cheering growing out of or connected with the Frank case, until after the verdict was rendered, and I was told about said incidents; the jury left the court room every time before the judge, lawyers, and audience were permitted to leave, and there was never any applause or cheering either inside of the court or outside of the court, within my knowledge, while the case was being considered; the jury, in leaving, were always attended by the deputy sheriffs or bailiffs, one always going in front and one always in the rear; we were usually taken direc from the court house to the German Cafe located midway of the block on Pryor Street, opposite from the court house, and it took only a very short time to go there--I should estimate about three minutes at the outside--upon reaching the German Cafe, we were taken directly to a private dining room in the rear of the building and the door immediately closed; after being shut up in this room, we never heard any sounds that in the slightest resembled applause or cheering; the only cheering that was heard at any time while the case was being considered was the cheering that arose shortly after the verdict of guilty was read, when there was cheering both on Hunter and Pryor Streets, and said cheering was loud and long; with the exception of this cheering, I never heard anything that had the slightest resemblance to cheering, and I never heard any applause except that heard by the judge and only heard about the cheering after having been discharged from the case: THAT neither on Saturday, August 23, 1913, nor on any other day or date, did any man or men other than the bailiffs in charge of the jury ever walk with or by the side of the jury, and neither did anybody, within my knowledge, ever speak to any juror at any time or place outside of the presence of the court: THAT if at any time any man ever grabbed any juror by the hand or held any conversation with any juror, the same was not in my presence; no man ever grabbed me by the hand at theplace referred to by W.P.Neill in his affidavit, nor did I see or hear or know anything about

any man grabbing any member of the jury by the hand or saying anything to any juror, or attempting to say anything to any juror and within my knowledge there was no communication at any time or place or in any shape, manner or form, with any juror, with any party on the outside; all communications had by the jury with outsiders, so far as I know, were through the bailiffs, and said communications were authorized by the court and known to counsel on both sides of the case: THAT so far ~~as I am~~ personally concerned, and so far as I know as to each and every juror on the case, they were influenced solely and alone by the evidence and the charge as given by the court, and were ~~not~~ influenced in any wise, in any way, manner, shape or form, by anything from the outside, but the verdict as rendered, was, so far as I am concerned, and as to the other jurors, so far as their deportments show, I believe was rendered from an honest opinion based on the law and evidence of the case.

F. V. L. SMITH makes affidavit, deposing and saying as follows:

THAT I was a juror on the Frank case; I did not know personally either A. H. Henslee or M. Joehenning, who were also jurors trying this case, until after we were sworn in on said jury; I had occasion to and do know the conduct of these two men on the jury; nat no time did either of them express themselves in a way to indicate that they were in the least bit prejudiced or biased, but each of these men, as did each and every other member of the jury, deport themselves as honest, prudent, and impartial jurors; if either the said A. H. Henslee or the said M. Joehenning believed that Frank was guilty until after the case had been heard, they at least did not so express themselves, or give vent to any other expression within my hearing or knowledge, indicating any bias or prejudice against the said Frank; beyond his sharing the universal opinion in the earlier stages of the trial, that the evidence had to be stronger to convict, I did not know how A.H.Henslee stood on the issue until after the first ballot had been taken; then said Henslee made

a talk and stated that he cast a doubtful ballot; there was one ballot marked "doubtful"; he explained to the jury why he cast this doubtful ballot, and submitted some suggestions with reference to the evidence; up to that time, so far as I know, said Henslee had not intimated or expressed any opinion whatsoever with reference to any feature of the case, except as above: THAT as to M. J. Oehenning; so far as I was able to judge from his conduct and deportment, said J. Oehenning was an upright, honest, fair, prudent, impartial and conscientious juror, imbued with only one purpose, viz., the ascertainment of the truth; what is said above as to the impartiality, fairness and conscientiousness of J. Oehenning is true of Henslee and likewise of each and every man on the jury: THAT I did not at any time, while a juror, hear any applause except such as occurred in open court, and which was heard by the judge, jury and attorneys in the case; the jury left the court-room every time before the judge, lawyers and audience were permitted to leave, and there was never any applause either inside of the court or outside of the court, within my knowledge, while the case was being considered, except as above; the jury, in leaving were always attended by the deputy sheriffs or bailiffs, one always going in front and one always in the rear; we were usually taken for lunch direct from the courthouse to the German Cafe located midway of the block on Pryor Street, opposite from the courthouse, and it took only a very short time to go there - I should estimate about three minutes at the utmost; upon reaching the German Cafe we were taken directly to a private dining room in the rear of the building and the door immediately closed; after being shut up in this room we never heard any sounds that in the slightest resembled applause or cheering; the only cheering that I heard at any time while the case was being considered was the cheering that I attributed to some eloquent speech by one of the attorneys and shortly after the verdict of guilty was read,

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when there was cheering both on Hunter and Pryor Streets, and said cheering was loud and long; with the exception of this cheering, I never heard anything that had the slightest resemblance to cheering, and I have never heard any applause except that heard by the judge and only heard aboutt ~~xhex~~ other cheering after having been discharged from the case. THAT the cheering which occurred just after the reading of the verdict in said case occurred during the time the jury were being polled by the Court: THAT at the time the cheering was heard no objection whatsoever was made by anyone representing Leo M.Frank, or by the said Leo M.Frank himself, nor was any motion made at the time by any of the attorneys of the said Frank or by the said Frank himself, to the best of my knowledge, but the polling of the jury, which was going on at the time the cheering began and during the cheering and after the cessation of the cheering, was continued: THAT this cheering did not in any wise influence or affect the verdict which had already been made, nor did it have any influence whatsoever: THAT deponent remained absolutely unaffected and uninfluenced by the cheering or the surroundings and in answering on the poll, deponent truthfully answered after he had heard the cheering that it was his verdict and in so answering sustaining the verdict, he discharged his duty and now subscribes to the correctness of the verdict as rendered: THAT neither on Saturday, August 23, 1913, nor on any other day or date, did any man or men other than the bailiffs in charge of the jury ever walk with or by the side of the jury, and neither did anybody, within my knowledge, ever speak to any juror at any time or place outwide of the presence of the court, except Hello from a distance: THAT if at any time any man ever grabbed any juror by the hand or held conversation with any juror, the same was not in my presence; to my recollection, no man ever grabbed me by the hand at the place referred to by W.R.Neill in his affidavit, even though I am not familiar with same, nor did I see or hear or know anything about any man grabbing any member of the jury by the hand, or saying anything to any

other juror, or attempting to say anything to any juror, except as above and within my knowledge there was no unauthorized communication at any time or place or in any shape, manner or form, with any juror, with any party on the outside; all communications had by the jury with putsiders, so far as I know, were through the bailiffs, and said communications were authorized by the court, and known to counsel on both sides of the case; THAT so fat as I am personally concerned, and so far as I know, as to each and every juror on the case, they were influenced solely and alone by the evidence and the charge as given by the court, and were not influenced in any wise, in any way, manner, shape or form, by anything from the outside, but the verdict as rendered, so far as I am concerned, and as to the other jurors, so far as their deportment shows, I believe was rendered from an honest opinion, based on the law and evidence of the case.

A.H.HENSLEE makes affidavit, deposing and saying as follows:

THAT I was served with the attahed subpoena, marked Exhibit "A", as a juror in the Superior Coutt of Fulton County: THAT this subpoena I found at my residence, No.74 Oak Street, West Eend, City of Atlanta, Fulton County Georgia, on July 25th., 1913, at approximately five o'clock in the afternoon; this was the first knowledge or information that I would be a juror; I remained in the city of Atlanta Saturday July 26th., 1913, and Sunday July 27th.,1913, and reported to the court on Monday, July 28th.,1913, when I was qualified and was sworn in ~~thex~~ as a juror in the ~~xhexxxx~~ case stated above; I was asked at the time the court convened, before I was sworn as a juror, if I had formed and expressed any opinion as to the guilt or innocence of Leo M.Frank, and I truthfully answered that I had neither formed nor expressed any opinion whatsoever; I furthermore then and there stated under oath that I did not have any prejudice

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or bias, either for or against the said Leo M.Frank, and that was absolutely true; furthermore I stated that my mind was perfectly impartial between the State of Georgia and Leo.M. Frank, accused of Murder; that answer given under oath, was absolutely true; my attitude toward the case was that of an impartial, unprejudiced man, seeking only to do my duty as a citizen and as a juror, with a due appreciation of the fact thatn a man's life or liberty must not be taken except the State produce evidence to overcome the presumption of innocence which I know the law gave to Frank, and which I - as a juror - gave to Frank at the time I qualified, and until the State, by an abundance of evidance, carried the burden: THAT at no time or place previous to the trial of Leo M.Frank did I ever express any opinion that the said Frank was guilty; nor did I every say, at any time or place, that it was my opinion that the said Frank would be lynched should the jury acquit him of the murder of Mary Phagan; I did casually, and on several occasions when the crime was discussed with different people the heinousness of the crime, and I did assert on several occasions, positivey, emphatically, firmly and possibly vehemently, that the man whoever he might be, who murdered thatlittle girl, ought to be hung; I have said since serving as a juror in the case against Leo M.Frank for twenty-nine days, without prejudice or bias and seeking to get at the truth, that in my opinion Leo M.Frank is the murderer of Mary Phagan, just as the jury said in rendereing the verdict of guilty; I read the newspaper accounts of the charge against Mallineaux, Gannt, Newt Lee, Leo M.Frank and Jim Connally for the first week or ten days after the murder, and after that there was so much of it that I discontinued reading the newspaperx articles fully, and limited myself to reading the headlines; at no time did I ever have or express an opinion as to who the guilty party was; I had no fixed opinion when I qualfied and was sworn on the jury, and I cannot recall that I ever had or entertained any unfixed or floating opinion founded on rumor, hearsay or newspaper reports, except as above stated; I did not assert that Whoever

committed the crime ought to be hung, whether Frank or any other person; the conduct of the entire jury after they were empannelled and sworn, was that of honest, upright, and impartial jurors; no member of the jury, including myself, within my knowledge, ever expressed an opinion of the guilt or innocence of Leo M.Frank during the trial, until after all the evidence was in, speeches in and the court had charged us to render a verdict; as illustrating the attitude which I occupied in this case, I will say that when it came to a vote, Icast a doubtful ballot; I did this on the first ballot because of the unanimity of opinion that Frank was guilty, as expressed by those jurors who discussed it after the Court's charge and prior to the ballot, and for the purpose of forcing a full and free discussion of the case before rendering a verdict, as we understood it might consign Frank to his death; when on the second and last ballot a unanimous verdict of "Guilty" was rendered, I - in common with each and every other man on the jury-wept; and I know that I appreciated thegravity of the duty devolved upon us; amd so far as I was able to judge, every man of the twelve had a due appreciation of the solemnity and importance of the duty that devolved upon us in hearing the case and rendering the verdict: THAT I have read the affidavit of one R.L.Gremer, a person unknown to me, who/said affidavit in purports to quote statements made by me in Albany,Georgia, at the place of business of Sam Farkas and in the presence of the son of the said Sam Farkas, namely, Mack Farcas; I do not, as above stated, know this said R.L.Gremer, but I have heard froma reliable source that said Gremer is a person of bad character and that he is unworthy of belief. As to Mack Farcas and the affidavitwhich I have just read, I emphatically state that I have never at any time mentioned the Leo M.Frank case to him or expressed any opinion.of said Frank; I am a travelling salesman for the Franklin Buggy Company, at Barnesville, Ga., and Sam FarKas is and has been for a number of years, one of my customers; and I know that the said Sam Farkas and the defendant were of the same race and religion; in the affidavit of the said Gremer and Farkas, they

domnot give any date when I was supposed to have made the remarks attributed to me; but I was not in Albany from June 2nd., and 3rd., 1913 at which time I was there, until September 18th.,1913; if at any time between April 26th. 1913, and July 28th., 1913, I ever saw Mack Farkas in Albany or elsehwere and had a conversation with him, I have absolutely forgotten it; I do know that I did not see this man Mack Farkas on my trip to Albany June 2nd., 1913 and June 3 1913; I did see Sam Farkas at his place of business and sold him a bill of buggies; I did see Mack Farkas on my visit to Albany on Sept.18th.,1913, but knowing that the said Mack Farkas and said Leo M.Frank were of the same race and religion, and not wishing to hurt his feelings, I did not mention the Frank case, or the fact that I had been a juror in the case: THAT I have kept an expense book showing fully, places visited and amounts expended; attached hereto is a book ending June 6th.,1913, same being marked "Exhibit B"; this book was written up from day to day; the entries inwsid books were made by me and are correct; and after having refreshed my memory from said entries, I swear positively as to my whereabouts on the dates set out therein; THAT I have read the affidavt purporting to have been signed by Julian A.Lehman; said Lehman states that I had a conversation with him on June 2nd., 1913, between Atlanta, Gz. and Experiment, Ga; in the first place on June 2nd., 1913, I was approximately two hundred and twenty miles from either Aylantam Ga. or Experiment, Ga; and in the second place, I never at any time or place, in anybody's presence, made use of zny such language as attributed to me as having been used in the presence of said Lehman on June 2nd.,1913; On June 1st., which was Sunday, I was at Eufaula, Ala, as is shown by entries which I made in the book attached, marked "Exhibit B", and which entries I know to be true; I was at Eufaula, Ala., on the morning of June 1st. from which place I went to Cuthbert, Ga., thenve to Edison, Ga., spending the night at the hotel at the last named place; On June 2nd., I went from Edison, Ga., to BlakelymGa., by way of Arlington, Ga , thence to Albany,

Ga.,, spending the night of June 2nd., at the New Albany Hotel in Albany, Ga. THAT said Lehman dps not state where it was that the said statement was made by me on June 20th.,1913; I unqualifiedly state, that I never on June 20th.,1913, or on any other date, made any such state,ent to Lehman or to anyone else; On June 19th.,1913, I was at Opelika, Ala, and Columbus, Ga., and on the 20th., I was at Columbus, Chipley and Cataula, Ga., and drove from Catahla to Waverly Hall by private conveyance and from Waverly Hall I went to Atlanta, arriving in Atlanta at 10:20 P.M. via Southern Railway; I have no recollection of having seen the said Lehman on the said date, and I positively deny that I ever gave expression in his presence or elsewhere to the sentimemtbor language attributed to me in his affidavit, given by him on September 19th.,1913, before Robert Patterson, Notary Public, Fulton County,Georgia. I remember, independntly of the entries made on the book hereto attached and marked "Exhibit C", my wherabouts on June 20th.,1913, after having refreshed my memory from said entries which were made by me and which I know to be correct: THAT I have read the depositions purporting to have been made by one C.P.Stough, before Sig Tittlebaum, Commissioner; the said Stough does not give in his despositions any definite time or place, except he say he heard me make certain statements about the time that Connally was reportef to have made a statement, and on some street car; I have a slight acquaintance with the said Stough, having known him casually for about six years; I am not intimate with him and do not recall having had any conversation with him on the College Park Street Car; I never made in the presence of the said Stough, at the place given or at any other place and time, the statements attributed to me; On October 4th., 1913, in the forenoon, after vthe newspapers of the City of Atlanta had carried a report of the deposition as given by the said Stough, in the presence of H.L. Bennett, that the said Stough in his depositions had lied, and the said Stough did not resent this statement: THAT I have read the affidavit of Samuel AAron, purporting to have been made on the 3rd. day of October, 1913, in which the said AAron states that about two days after the indictment of the said Leo M.Frank, said Aaron heard me at the Elk's Club in the

in the City of Atlanta say "I am glad they indicted the God damn Jew", they ought to take him out and lynch him, and if I get on that jury I will hang that Jew sure." I emphatically deny that I used any such expression at any time or place; I am a member of the Elk's Club; said Club has among its members a large number of Jewish people, many of whom are my friends. I never entertained any prejudice or animus against the Jewish people, or against any one of them, and I did not make use of any such expression before said Aaron or any one else; I was at the Elk's Club on Sunday, May 25th, 1913, in the morning: THAT I have read the depositions of W.L.Ricker, in which he undertakes to quote me; I do not know the said Ricker - I may have been introduced to him; I did not make the statement at any time or place as sworn to by said Ricker; Ricker said that the conversation that he heard was in the store of Nunnally andHarris at Monroe, Georgia; I have read also the depositions of J. J. Nunnally with reference to the conversation about which Ricker testified; I remember that the Frank case was discussed in the store of Nunnally andHarris; this discussion occurred on June 22nd., 1913; it was participated in by a number of people; I discussed it casually and incidentally as did all of the other parties present; I was not in the store more then sixty minutes at the outside; during a part of this time, I was engaged in an effort to sell Nunnally and Harris some buggies, and the Frank case was not discussed all of this time; or if it was, certain it is I did not participate in the discussion; I positively deny that I used the expression "They are going to break that Jew's neck" as stated by Ricker in his depositions, and I likewise deny making any such statements in manner, form or substance, as set out in the depositions of said Ricker; I did not in themanner, form, or substance, in the presence of the said Ricker or Nunnally, or in the store of said Nunnally and Harris, or anywhere else, at any time say if the jury turned Frank loose, he could never get out of Atlanta alive; I did state in the discussion of the Frank case that it was my opinion that the man guilty of the murder of Mary Phagan ought to be hung; I had not been reading

at this time, anything more than the headlines of the newspapers and I had not formed any opinion based on newspaper reports or casual rumor as to whether or not Frank was the man guilty of the crime, and I did not express myself in the language attributed to me by the said Ricker or any other language; nor did I know that the public sentiment was so strong against Frank that he would not be able, if acquitted, to get out of the City of Atlanta alive, and I positively and emphatically deny that I ever made use of any such expression; I was constantly on the road traveling from April 26th., 1913, until July 28th, 1913, during every week, and did not spend a sufficient length of time in Atlanta to know what the public sentiment there was with reference to the guilt or innocence of the trialLeo M. Frank; THAT I have read the depositions of H. Shi Gray, S. M. Johnson, and John M. Holmes; I had a conversation on Sept. 2nd, 1913, with the said H. Shi Gray, S. M. Johnson, and John M. Holmes; this was after the verdict in the Frank case had been rendered on August 25th., 1913; I never saw Gray, Johnson or Holmes togehter or separately after I was served with a subpoena as a juror which was Friday July 25th., 1913, until after I was discharged from the jury on the Frank case; THAT on July 24th, 1913, I was at Athens, Ga., on July 25th, 1913, I was at Statham, Winder and Atlanta, Ga.; I remained in Atlanta on the 26th. and 27th. and went on the jury on July 28th; I never saw either of these men, either in Sparta or elsewhere, after I knew I was a juror on the Frank case, until Spet. 2nd., 1913, at which time, I did discuss with each and all of them the Frank case, fully and freely in Walker and Holmes Insurance Office; I then stated that in my opinion there was not a shadow of a doubt but that Frank was guilty; I did not hear several parties, as stated by S. M. Johnson in his depositions, say that they thought Frank was not guilty; but on the contrary every man who discussed the case in my presence in the office aforesaid, expressed the opinion that the said Leo M. Frank was guilty; and I was congratulated by everyone who came into that office among them

H.Shi Gray, S.M.Johnson, and John M.Holmes θ on rendering the verdict of "Guilty"; I was introduced by Mr.Holmes to their many friends and acquaintenancesxx as having been one of the jurors on the Frank case; I furthermore stated on the occasion which I refer to, xxxx namely, September 2nd.,1913, that said Frank was a moral degenerate and apervert; I based this statement on the evidence adduced upon the trial; before that I did not have any knowledge or information whatsoever which would have warranted me in surmising that Frank was a degenerate and a pervert; attahed marked "Exhibit D" is a letter from H.Shi Gray, John M.Holmes and S.M.Johnson, in which they state that I said in the conversation I had with them, that said Frank, in my opinion was a pervert; I base this assertion upon the evidence adduced upon the trial of the case; up until this time I did not believe that Frankwas a pervert, but after hearing the evidence I could not avoid such a conclusion; I then believed that Frank was a degenerate and a pervert, and I so stated to the three men at Sparta; not however on the date they say and not prior to the trial of Leo M.Frank, but after his conviction towit, sept.2nd.,1913 I deny that I ever made any other statements attributed to me by the said Johnson, Gray and Holmes, prior to the trial of Leo M. Frank, but all of the statements made were made subsequent to the trial, and after I had full knowledge of the evidence in behalf of the State and defence. I was in Sparta on June 27th.,1913; I did not know that I had been drawn as a juror until about 5 o'clock on the afternoon of Friday, July 28th., 1913; I do not know of my own personal knowledge when I was drawn; I am informed and believe the jury was not drawn until Thursday July 24th.,1913; I am informed and believe that my name was not drawn out of the jury box for the Frank trial until Thursday, July 24th.,1913, and I am certain if it was I did not know of it until the next day, Friday, July 25th.; I swear positively, after having refreshed my memory by entries made by me at the time in the book hereto attached, marked "Exhibit E", that I was in Sparta on June 27th., 1913, and I am equally positive in saying that I never did go back t to Sparta after June 27th.,1913, as shown by my book, and as I

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stated in my recollection, until September 2nd, 1913; that if I have ever expressed any opinion, anywhere, at any time prior to this trial, that Leo M. Frank was guilty, I do not remember; I never had any prejudice against the said Leo M. Frank, and I never had any fixed opinion, or entertained any kind of opinion of the merits of the case until I heard the evidence; and I qualified as a juror with an unbiased mind, and with a disposition to readily yield and conform to the evidence, and to be controlled absolutely by the law and the evidence; that I did not know M. Johenning, one of the jurors in the case of the State vs. Leo M. Frank, until we were empannelled and sworn in the case; I do not recall that I ever saw him before; I did not observe the conduct and the deportment of the said Johenning during the entire twenty nine days that we were together as jurors; he did not say or do anything during that entire time that enabled me to know how he stood on the issue; he did not give vent, so far as I saw or know, to any expression indicating any bias, or prejudice for or against the defendant, Leo M. Frank; so far as I was able to judge from his conduct and deportment, said M. Johenning was an upright, honest, fair, prudent, impartial and conscientious juror; imbued with only one idea and purpose, namely the ascertainment of the truth, under the evidence, and under the law given in charge by the court; the same is true of each and every other juror on the panel; that I did not at any time while a juror hear any cheering, and no applause, excepting open court, which was publicly taken notice of and repressed by the court. I did not know that there had been any cheering of anybody connected with the case, or that there had been any cheering in any way growing out of the Frank case; I did not hear anybody say that there had been any cheering until after the verdict was rendered, and I did not hear any myself at any time, until after the verdict was rendered, when I did hear about two or three minutes after the verdict had been read, and while the jury was being polled, cheering on the

outside of the courthouse; I did not hear any applause in the courtroom that I now recall, except as above stated; I do not recall what occasioned any laughter, except that occasioned by the cross examination of Jim Connally by Mr.Rosser, counsel for Frank; I laughed myself, as did the audience and all of the jury, when Connally told Mr.Rosser how he spelled certainbrands of pencils and other words; I laugh d and the audience laughed when B.Dalton told Mr.Rosser when and where he was born, stating that he was there but could not remember; also in conjunction with other members of the jury and the aidience when the said Dalton said that Mrs.Daisy Hopkins was a peach and preetty as a pink; also the jury and the audience laughed when Newt Lee stated that he "Lit a rag" instead of "ran", referring to his exit from the basement where the body of little Mary Phagan was found; on no other occasion did I observe any applause, or if I did - I do not remember it now; I do not remember any occasion when there was any demonstration or applause otherwise than on the part of the audience and spectators: THAT I have read the affidavit of Sampson Kay with reference to certain alleged occurences on Saturday evening, August 23rd., 1913 about 8 or 8:30 o'clock; I remmeber distinctly the walk which the jury took at that time on Pryor Street; there was a deputy sheriff in front of the jury and one in the rear; it is not true that six ~~XXXXXX~~ or seven men, or any man not connected with the Frank jury either as a juror or a bailiff walked among by the sied of the jurors and taleked to or with them, either at the time and place referred to by the said Kay or at any other time and place: THAT I have read the affidavit of one W.P.Neill; I was not the juror referred to in said affidavit, or the affidavit does not speak the truth; no man grabbed me by the hand and arm or by the hand or arm, at the place stated by Neill in his affidavit, or talk to mel I did not see or hear or know anything of any such thing as detailed in the affidavit happening to any other of the jurors, as is set out in the affidavit made by said Neill; I did not ~~know~~ see or know

anything about it if anything like that took place and I did not hear the sheriff speak to anyone about it; there was no communication at any time or place in any shape, manner or form with me from the outside after the jury was empanneled and so far as I know, there was no communication with any juror except letters which came through the sheriff or bailiff and which were by the court permitted; and I never read any letter or communication of any character that had not been opened before it came to me through the sheriff; and no man ever said anything to me by look, sign or symbol nor ever undertook to convey any message or give any indication or intimation of anything from the outside; so far as I know or believe, this statement is applicable to every other juror on the case.

H. Shi Grayk John M. Holmes and S. M. Johnson write A. H. Henslee as follows (the same being a part of said Henslee's affidavit).

"We notice in several Atlanta papers your emphatic denial of ever having talked with us or made a statement to us of the guilt or innonence of one Leo M. Frank; you are further quoted as saying that if we state that you ever said that you believed Frank guilty that we are liars. Also that the whole deposition is a lie out of the whole cloth; we cannot believe you are correctly quoted as it is impossible to conceive how you can deny the statements youmade here and the intense feeling you manifested when discussing the matter; you must recall, in Mr. Holmes' office, on the day stated in the presence of the undersigned, we all discussed the Frank case and practically tried him, as it were, and that in the discussion you not only stated that 'Frank was as guilty as H---l'; but you had much to say about Frank being a moral degenerate (your exact language we cannot use here), and you further stated that you had been drawn as a juror. We have no disposition to injure you or to make public your statements, as the writers, Gray and Holmes, have known you and your family for a number of years, and we do not know how the attorneys were acquainted with the fact of this conversation; but your remarks were common talk in the town and there a number of our people who could have given the information to the attorney. We declined to make a voluntary affidavit in the matter and said nothing until forced to do so by the courts, but let us assure you that this reluctance to testify in no way changes the facts, and you shall not be permitted to make statements to the public press denouncing us as liars in order to protect yourself from the criticism you justly deserve. We await your answer."

C. F. Huber and A. F. Pennington, who after being duly sworn depose and say that they are deputies to the Sheriff of Fulton County, Georgia, and were in charge of the jury in the above stated case constantly during the trial of said case; that on Friday afternoon when the jury left the court house they went direct along Pryor street to the Kimball house; deponent Huber was in the rear of the jury, who proceeded northward along Pryor Street

walking two abreast, said jury following immediately behind deponent Pennington: THAT Deponents have read the various affidavits which deal with alleged cheering of the Solicitor General as he left the court house on said Friday afternoon, August 22,1913; dpponents state under oath that they did not hear any ~~other~~ cheering or demonstration of any kind on said afternoon, hor did they hear any applause for the Solicitor General or for any one else; THAT when court adjourned on Saturday, August 23, 1913, soon after the noon hour, deponents took the jury from the courthouse northward along Pryor street; they did not, on this occasion, hear any applause or cheering demonstration of any kind whatever for the Solicitor General or for any one else; THAT on Monday, August 25th.,1913, around the noon hour, jyst after the Court had adjourned, the judge having charged the jury before said adjournment, deponent C.F.Huber says that he, together with R.B.Deavors and W.M.Hunter, was in charge of the jurors, and took them to the German Cafe, where they occupied a private didning room in the rear of the building; in this dining room, with closed doors, the jurors were served with their lunch, and at no time between the time they left the jury box and the time they got into this private dining room, nor while occupying said dining room, nor on their return to the jury room at the court house for the purpose of considering and making a verdict in said above stated case, did deponent hear any applause, or cheering or demonstration of any kind whatever, nor could the jury while in the dining room hear any demonstration which may have taken place in front of said German Cafe, but said dining room was perfectly quiet: THAT deponents on Saturday evening, August 23, 1913, took the jurors out for a walk and returned to the Kimball House northward along Pryor Street: THAT deponents have read the affidavit of Samson Kay and emphatically deny that at any time on said ~~Friday~~ Saturday evening, August 23,1913, did six or seven men, or any other number of men, or persons, follow along by the side of the jury, in the Frank case, or behind them, or in front of them, talking to them from the corner of East Fair Street and South Pryor Street up to the Union Station, nor did

said six or seven men or any other number of men talk to the jurors or any of them, on South Pryor Street, or in the German Cafe, or at their rooms at the Kimball House, or elsewhere, at any time, between the time the jury was impannelled and the time when it was discharged after having finally rendered its verdict in the said case, so far as deponents know or believe; at no time and in no place did deponents see any member of the jury in this case communicate with, or attempt to communicate, with any one excepting the officers of the law, at such times and in such manner as was allowed by law; deponents at no time heard any cheering by the spectators in or out of the court, which was heard by the jury, excepting the incident which occurred when the jury was being polled after the verdict; deponents know of no other demonstration within the sight or hearing of the jury, except the instances of applause in the court room in the presence of the judge, and which was noticed officially in open court by said judge; that deponents know of no influence, or attempted influence exerted upon the jury or any member thereof by spectators in or out of the court room or elsewhere.

A. H. Henslee makes the following affidavit, deposing and saying as follows: That he has read the affidavit of M. Johenning, made on the 18th of October, 1913, with reference to the influence of the cheering which occurred while the jury was being polled, and says that the statements contained in said affidavit are true and correct, and deponent adopts same as his affidavit.

J. C. Lewis, makes the following affidavit, deposing that he is in the employ of the Clerk of the Superior Court of above State and County; that during the trial of the Frank case,

he occupied an anteroom to the court room in which said case was tried directly across the hallway from the jury room; that in leaving the jury box, and retiring to the jury room, it is necessary to pass through three doors; that deponent knows of the occasion of the applause in the court room when the Judge declined to rule out and exclude the evidence of Jim Conley as to two certain acts of degeneracy and perversion on the part of Leo M. Frank, the defendant; deponent was present in the court house at this time and knows that at the time this occurred, the jurors were in their room and two doors between said jurors and the courtroom where this applause took place were closed; and in deponent's opinion said applause could not have been heard by the jury.

H. L. Bennett makes affidavit deposing and saying as follows: I am personally acquainted with one C. P. Stough, having had a casual acquaintance with him for about five years; I also know his general character and reputation, and I consider his general character and reputation bad; I am also acquainted with A. H. Henslee, and know his character and reputation to be good.

M. W. Medcalf makes affidavit as follows: I was one of the jurors in the Frank case, and heard the cheering which followed the reading of the verdict of guilty in open court, and which said cheering was by parties outside of the court; said cheering occurred during the time the jury was being polled. No objection whatsoever was made by anyone representing Leo M. Frank, or Frank himself, at the time of the cheering, nor was any motion made at the time by any of his attorneys, but the polling of the jury was continued; this cheering did not influence or affect the verdict which had already been made, nor did it have any influence; I remained absolutely unaffected and uninfluenced by the cheering or the surroundings and in answering on the poll, I truthfully answered, after I head heard the cheering, that it was my verdict and in answering as aforesaid I discharged my duty as a conscientious juror and now subscribe to the correctness of the verdict as rendered.

M. Joehenning makes the following affidavit, deposing and saying as follows: That he was one of the jurors who served on the above stated case and heard the cheering which followed soon after the reading of the verdict of guilty in open court and which said cheering was by parties outside of the court, and which said cheering occurred during the time the jury were being polled by the court.

At the time the cheering was heard no objection whatsoever was made by anyone representing Leo M. Frank or by Leo M. Frank himself, nor was any motion made at the time by any of the attorneys of said Leo M. Frank, or by said Frank, but the polling of the jury which was going on at the time the cheering began and during the cheering and after the cessation of the cheering was continued.

This cheering did not in anywise influence or affect the verdict which had already been made, nor did it have any influence whatsoever.

I remained absolutely unaffected and uninfluenced by the c cheering or the surroundings and in answering on the poll, I truthfully answered after I had heard the cheering, that it was my verdict and in answering sustaining the verdict, I discharged my duty as a conscientious juror and now subscribe to the correctness of the verdict as rendered.

F. L. Hunter makes the following affidavit and deposes and states as follows: that he was a deputy sheriff on duty at the trial of Leo M. Frank in the above stated case; that he was in the court house almost constantly during said trial and went to and from lunch on various occasions with the jury during the trial in said case; that at no time in the court room did deponent hear any applause, cheering or other demonstration in said case, which could have been heard by the jury, excepting the applause, cheering or other demonstration in said cuase, which could have been heard by the jury in open court and in the presence of the judge, and excepting the cheering and hurrahs in the street after

the reading of the verdict, while the jury was being polled. Deponent says that at no time did he see any one speal to or attempt to speak to any member of the jury, except officers of court in the discharge of their duty. Deponent further states that he never at any time witnessed or knew of any misconduct on the part of any member of the jury, but states, under oath, that at all times, when in his presence each member of the jury deported himself as an upright, honorable and conscientious juror, seeking to faithfully discharge his duty. Deponent say no armed spectators in or about the courthouse where the trial was being conducted, nor did he hear any threats of violence expressed in or about said courthouse toward the defendant Leo M.Frank.

Deponent states that he witnessed the efforts of spectators to carry the Solicitor General on their shoulders, referred to in an affidavit in the possession of the defense, and says that the same occurred after the verdict of the jury had been read and the jury polled, and while the Solicitor General was on his way to his office. No demonstration by spectators on the outside of the courthouse on either of the last three days of the trial, to-wit, August 22nd, 23rd, 25th, was within the presence or the hearing of the jury, so far as this deponent knows or believes.

R. B. Deavours makes the following affidavit, deposing and saying as follows: that he is a deputy sheriff in and for Fulton County, Georgia, and was on duty during the trial of Leo M. Frank; that he was present in the courtroom every day during said trial, and that, with the exception of the applause which took place a few times in open court and within the hearing of the presiding judge, he knows of no applause, cheering or demonstrations that were heard by the jury On Monday, August 25, 1913, deponent with C.F.Huber, and W.M.Hunter, went with the jury to the German Cafe for lunch; deponent says that on said occasion, as the jury were entering the care, deponent heard some noise as of people hollowing, back in the direction of the courthouse, but could not distinguish any words which were used by the people, did not know who it was creating the noise, what was said, or what prompted the same. The jury passed through the cafe and into the dining room in the rear of the building, where they lunched with closed doors. No cheering or applause or other demonstration could be heard after entering the building. Deponent states further, that so far as he was able

to judge, the jury at all times, when he was present, deported themselves as honest, honorable, conscientious, unbiased and unprejudiced jurors, and at no time were any of said jurors guilty of any misconduct, within his presence of knowledge.

Drew Liddell makes the following affidavit, deposing and saying as follows: that he is a deputy sheriff of Fulton County, Georgia and was on duty constantly during the trial of the above stated case. On Friday, August 22nd, and Saturday, August 23, 1913, deponent, with other deputies, accompanied the jury to and from the German Cafe and was with them at the time of the alleged demonstration at the corner of Hunter and South Pryor Streets. Deponent says that at the lunch hour on both occasions the jury were beyond the hearing of the crowd when the alleged demonstrations took place, if in fact any demonstrations did take place. Deponent says that when the jury had entered the private dining room in the rear of the German Cafe on Saturday, August 23, that he was outside of the dining room, in the act of entering the same; that he heard a slight commition in the front of the building, but the jury had passed intomthe dining room, and he is sure did not hear and could not have heard said demonstration, which was scarcely audible in the rear of the building where said dining room was located. Deponent, with other deputies, was in charge of said jury on various occasions during the trial, and at no time, so far as this deponent knows or believes,- certainly not when deponent was with them, - was any effort made to communicate with the jury by any persons other than a court officer in the discharge of his duty. At no time during said trial was any cheering, applause or other demonstration made within the hearing of the jurym excepting that which occurred in open court in the presence of the presiding judge, and also excepting the demonstration made in the streets immediately after the announcement of the verdict, while the jury was being polled. Deponent neither witnessed nor heard of any misconduct on the part of any member of said juryat any time during the trial of the above stated case, nor did deponent see anyone in or about the courthouse armed other than the officers of the law during this trial, or hear or know of any threats in or about said courthouse or in its vininity or elsewhere against the life of the said Leo M.Frank,who was on trial.

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C.J.Bosshardt makes affidavit as follows: I have read the affidavit of J.T.Ozburn, executed on Oct.16,1913; and hereby adopt said affidavit of said Ozburn, and that the said allegations contained in said affidavit are true and correct. C. J.Bosshard makes affidavit as follows: I am one of the jurors who served on the above stated case, and heard the cheering which followed soon after the reading of the verdict of guilty in open court, and which said cheering was by parties outside of the court, and which cheering occurred during the time the jury was being polled; No objection whatsoever was made by any attorney representing Frank or Frank himself at the time of this cheering, nor was any motion made by any of the attorneys of said Frank, or by Frank, but the polling of the jury which was going on at the time the cheering began was continued; this cheering did not in any wise influence or affect the verdict which had already been made, nor did it have any influence whatsoever; I remained unaffected and uninfluenced by the cheering or surroundings, and in answering on the poll, I truthfully answered after I had heard the cheering that it was my verdict, and in answering sustaining the verdict I discharged my duty as a conscientious juror and now subscribe to the correctness of the same.

J.T.Ozburn, W.M.Jeffries, A.L.Wisbey make the same affidavits as C.J.Bosshardt, set out above.

Lou Castro makes affidavit as follows: I have known Samuel Aron for over a year and am acquainted with his general character and reputation; his character and reputation is bad, and from my knowledge of that character and reputation I would not believe the said Aron on oath; I am acquainted with the general character and reputation of C.P.Stough; his character and reputation is bad; I would not from my knowledge of that character and reputation believe the said Stough on oath.

Joe Murray makes affidavit as follows: I am a Clerk of the New Albany Hotel in Albany, Ga; one A.H.Henslee a patron of said hotel registered for lodging on June 2, 1913, and was a guest of the hotel on the night of June 2, 1913; that said A.H.Henslee registered at said hotel on Sept. 18, 1913, before the noon meal.

M. N. Weaver, O.H.Puckett, T.W.McGarrity and W. C. Robinson each make affidavit that they are personally acquainted with M. Johenning; that they know his general character and reputation; that his general character and reputation is good and that deponents regard him as an honest, conscientious, upright and thoroughly trustworthy man.

M.G.Staten and T. S. Hawes state that each of deponents are acquainted with R. L. Greemer; that the general character of the said Gremer is and was bad and that deponents would not believe that said Gremer on oath.

W.E.Mote, R.H.McKenzie and W.H.Clyaton make affidavit deposing and saying that they are acquainted with W.P.Neill; that his general character and reputation in the community were Neill has lived is bad and that they would not believe him on oath.

W. M. Howard, J.C.Gillier, T.W.Cochran, P.L.Cordy, J.E. Howard, J.D.Lockridge and C.O.Summers each make affidavit that they know A. H. Henslee, one of the jurors who served in the case of the State of Georgis, vs. Leo M. Frank; that each of the witnesses is acquainted with the general character of the said A. H. Henslee, and that the general character and reputation of the said Henslee is good, and from his general character and reputation, each of deponents would believe the said A.H.Henslee on oath.

H.R.Pitts, W.L.Lyle, T.M.Webb, and John R.Flournoy, each make affidavit that they know Samuel Aron; that they know the general character and reputation of the said Aron; that the said general character and reputation of the said Aron is bad and that deponents would not believe him on oath.

W. M. Hunter makes affidavit, deposing and saying as follows: I, with Mr. C.F.Huber and R.B.Deavors, had charge of the jury in the above stated case, at the lunch hour on Monday, August 25th, 1913; that at no time between the time the jury left the box to go to lunch on said date, and the time they returned to the jury room, to consider and make their verdict, either while on the street in going to the cafe, while in the cafe, or in returning to the court house, did I hear any applause or cheers, or other demonstration on behalf of the Solicitor General, or anyone else. At no time during the trial of said case did I see or know of anyone, excepting the officers of the court, communicating with, or attempting to communicate with any member of said jury; I witnessed no misconduct of any kind on the part of any member of the jury in the above stated case.

Z. A. Mann, makes affidavit, deposing and saying as follows:

I was present in the court room during the trial of the case of the State vs. Leo M. Frank, charging with murder;

I was aiding the Sheriff, and as a deputy was stationed immediately in the rear of the jury box; He was in position to hear all that the jury could hear in the court room, and at no time did I hear any applause, excepting what occured in open court, in the immediate presence of the Judge presiding and which was officially noticed by him; No cheering from the outside was heard, excepting during the polling of the jury, after their verdict had been read; I observed no misconduct on the part of any juror, and no communication or attempt to communicate with any member of the jury, except by the officers of Court in the discharge of their official duties.

Plennie Miner, makes affidavit, deposing and saying as follows:

I have seen the affidavit of W. P. Neill made for use in the above stated case and I am the Plennie Miner referred to by Neill in his affidavit; that the incident referred to by the said Neill evidently did not happen in the way and manner described by W. P. Neill but the following are the facts: On one occasion when the jury were retiring from the box to their room in the east end of the courthouse, I saw a spectator sitting who I thought spoke to a member of the jury. He did not rise from his seat nor did he take the juror by his arm nor by his hand nor did he otherwise touch the juror but appeared to speak to some one and at the time I thought said spectator addressed a member of the jury; I immediately went to him for the purpose of taking him before the Judge but he denied that he addressed the remark, which I did not hear, to the Juror and the gentleman sitting next to him assured me that this spectator was not addressing a member of the jury and the two having assured me that I was mistaken and having been thoroughly convinced that I was mistaken, I warned them that an action on the part of a spectator in addressing the jury would be a violation of the law and let the incident drop because ofnthe fact that I was fully convinced that the mistake was mine. This described the incident as it really occurred; At not time any where in my presence did any one other than the officers of the law, acting within the discharge of their duty, address any

member of the jury individually or the jury collectively from the time the jury was impannelled until they had rendered their v verdict and had been discharged. I am the Deputy Sheriff regularly assigned to the Criminal Division of Fulton County Superior Court and was on duty and in charge of the courtroom during the entire time Leo M. Frank was on trial; I have read the affidavit of Mrs. A. Shurman and others with reference to the cheering on the outside of said courtroom during Friday and Saturday and Monday, the last three days of the trial. I was not with the jury as they left the courthouse to go to lunch on either of the three said days but was in the courtroom at the time the cheering took place on the outside. I know that on Monday morning just before court convened when there was cheering in the street the jury were in their room in the rear of the courtroom; they were also in the rear of the courtroom when the Solicitor General entered and thebspectators started to applaude; I tapped on the wall or some other object and raised my hand in warning and the spectators immediately desisted: the applause was very slight and very low and was stopped promptly when I rapped and I am sure that the jury in their closed room did not and could not have heard the same. This was on the last day of the trial, to-wit, August 25th, 1913; I was not with the jury at any time when any applause except that in open court and in the immediate presence of the Judge could have been heard by the jury; I was not in charge of ornwith the jury at any time when any other demonstration or cheering for the Solicitor General or for anyone could have been heard by said jury; At no time when I was in charge of or with the jury was any member of the jury guilty of communicating with or attempting to communicate with any person on the outside in any way nor during said trial from the time the jury was impannelled until their discharge after verdict rendered was any member of the jury guilty of any misconduct of any nature whatever; At no time did I hear any threat against the life of Leo M. Frank among the spectators at the courthouse or elsewhere nor at any time did he see or know of

any spectator or person at or around the said courthouse, during the trial of Leo M. Frank other than the officers of the law, to have in their possession or on their person any pistol pr arms of any kind or character.

W. F. Medcalf, makes affidavit, deposing and saying as follows:

I was a juror on the Frank case. Idid not know personally either A. H. Henslee or M. Joehenning, who were also jurors, trying this case, until after we were swwrn on on said jury, I had occasion to and do know the conduct of these two men onthe jury. At no time did either of them express themselves in a way to indicate that they were in the least bit prejudiced or biased, but each of these men, as did each and every other member of the jury, deported themselved as honest, upright, prudent and impartial jurors. If either the said A. H. Henslee or the said M. Joehenning believed that Frank was guilty until after the entire case had been heard and concluded and submitted to the jury, they at least did not so express themselves, or give vent to any other expression within my hearing or knowledge, indicating any bias or prejudice against the said Frank. Idid not know how A. H. Henslee stood on the issue until the first ballot had been taken. Then said Henslee made a talk and stated that he had case a doubtful ballot. There was one ballot marked "doubtful"; He explained to the jury, why he cast this doubtful ballot, nd submitted some suggestions with reference to the evidence.. Up to that time, so far as I know, said Henslee had not intimated or expressed any opinion whatsoever with reference to any feature of the case; As to M. Joehenning: During the entire twenty-ninxe days that we were together as jurrors, he did not, so far as I know, say or in any way intimate how he stood on the issue; So far as I was able to judge from his conduct and department, said Joehenning was an upright, honest, fair, prudent, impartial and conscientious juror, imbued with only one purpose, viz, the ascertainment of the truth; What is said above as to the impartiality, fairness and

conscientiousness of Joehenning is true of Henslee and likewise of each and every man on the jury; I did not hear at any time, while a juror, hear any applause except such as occurred in open court, and which was heard by the judge, jury and attorneys in the case; I did not know that there had been any cheering of anybody connected with the case at any time or that there had been any cheering in any way growing out of or connected with the Frank case, until after the verdict was rendered, and I was told about said incidents; The jury left the courtroom every time before the judge, lawyers and audience were permitted to leave, and there was never any applause or cheering either inside of the court or outside of the court, within my knowledge, while the case was being considered; The jury, in leaving, were always attended by the deputy sheriffs or baliffs, one always going in front and one always in the rear; We were usually taken direct from the courthouse to the German Cafe, located midway of the block on Pryor Street, opposite from the courthouse, and it took only a very short time to go there, -- I should estimate about three minutes at the outside; Upon reaching the German Cafe, we were taken directly to a private dining room in the rear of the building and the door immediately closed; After being shut up in this room, we never heard any sounds that in the slightest resembled applause or cheering; The only cheering that I hear from the time I was sworn to the time I was discharged was the cheering that arose outside of the courthouse after the verdict had been read and while the jury was being polled; With the exception of this cheering, I never heard anything that had the slightest resemblance to cheering, and I never heard any applause except that heard by the judge and only heard about the cheering after having been discharged from the case; Neither on Saturday, August 23,1913, nor on any other day or date, did any man other than the bailiffs in charge of the jury ever walk with or by the side of the jury, and neither did anybodym within my knowledge, every speak to any juror at any time or place outise of the presence of the Court; If at any time any man ever grabbed any juror by the hand or held any conversation with any juror, the same was not in any

my presence. No man ever grabbed my by the hand at the place referred to by W. P. Neill in his affidavit, nor did I see or hear or know anything about any man grabbing any member of the jury by the hand or saying anything to any juror, or attempting to say anything to any juror, and within my knowledge there was no communication at any time or place or in any shape, manner, or form, with any juror, with any party on the outside. All communication had by the jury with outsiders, so far as U know, were through the bailiffs, and said communications were authorized by the court and known to counsel on both sides of the case; so far as I am personally concerned, and so far as I know as to each and every juror on the case, they were influenced solely and alone by the evidence and the charge as given by the court, and were not influenced in anywise, in any way, manner, shape or form, by anything from the outside, but the verdict as rendered was, so far as I am concerned, and as to the other jurors, so far as their deportment shows, I believe was rendered from an honest opinion based on the law and evidence in the case.

Upon considering said motion for new trial, the court rendered a judgment denying the same and in rendering said judgment, stated that the jury had found the defendant guilty; that he, the judge, had thought about this case more than any other he had ever tried; that he was not certain of the defendant's guilt; that with all the thought he had put on this case, he was not thoroughly convinced that Frank was guilty or innocent, but that he did not have to be convinced; that the jury was convinced; that there was no room to doubt that; that he felt it to be his duty to order that the motion for a new trial be overruled.

To this judgment and decision of the court denying the movant, Leo M. Frank, a new trial, said Leo M. Frank then and there excepted, and here and now excepts and assigns and specifies as error the failure and refusal of the court to grant a new trial upon each and every ground both of the original motion for new trial and the amendment to the motion for new trial, both said original motion

for new trial and said amendment to the motion for new trial being parts of the record in said case, and reference being hereby had to the same; and movant further specifies as to the error complained of that the court failed and refused to grant a new trial upon each and every ground contained in said motion for new trial end the amendment thereto, reference being hereby had to the same as if fully embodied herein, the same being of record.

Defendant further excepts to said judgment overruling the motion for new trial and alleges error therein in not granting a new trial upon each and all of the grounds of the original and amended motion on the grounds and reasons in said amended and original motions fully set out--reference hereby being had to the same, as if fully embodied herein, the same being part of the record in said case.

And now, within twenty days from the judgment refusing said motion for new trial, and in due and legal time, the said Leo M. Frank presents this, his Bill of Exceptions, and prays that the same be signed and certified, and specifies as the portions of the record in said case, material to a clear understanding of the errors complained of, the following, to-wit:

1st. The indictment in said case.

2nd. The plea of not guilty.

3rd. The verdict of the jury and the sentence of the court.

4th. The original motion for new trial, together with all entries and rules nisi thereon.

5th. The amended motion for new trial, together with the approval and certificates of the judge thereto and to the original motion and all entries thereon, and together with all exhibits thereto.

6th. The certificate of the judgeapproving the grounds of the original motion for new trial and the amended motion for new trial.

7th. The brief of the evidence in said case and the approval thereof by the court and all entires thereon.

8th. The charge of the court with approval of the judge thereon.

9th. The judgment of the judge refusing a new trial in said case.

This 1 day of Nov., 1913.

Reuben R. Arnold
Roan & Bryander
Herbert Haas
Attorneys for Leo M. Frank,
Plaintiff in Error.
Address, Atlanta, Ga.

I do certify that the foregoing Bill of Exceptions is true and contains and specifies all of the evidence and specifies all of the record material to a clear understanding of the errors complained of; and the Clerk of Fulton Superior Court is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of Exceptions specified, and certify the same as such and cause the same to be transmitted to the present term of the Supreme Court of Georgia, that the errors alleged to have been committed may be considered and corrected.

This 1st day of November, 1913.

L. S. Roan
Judge S. C. Atlanta Circuit
Presiding

Due and legal service of foregoing bill of exceptions acknowledged - Copy, and all other and further service waived - This November 1st 1913

Frank A Hooper
Hugh Dorsey
Solicitor General
Atlanta Judicial Circuit

FILED IN OFFICE, THIS THE 1st day of November 1913 at 4:05 P.M.
Arnold Broyles, Clerk

78

1st day of November A.D. 1913 at 4:05 P.M.

[illegible] Clerk.

GEORGIA, Fulton County.

I Hereby Certify, That the foregoing Bill of Exceptions, hereunto attached, is the true original Bill of Exceptions in the case stated, to-wit:

Leo M. Frank

Plaintiff in Error.

vs

The State of Georgia

Defendant in Error.

and that a copy hereof has been made and filed in this office.

Witness my signature and the seal of Court affixed this the 15th day of November 1913

Arnold Broyles

Clerk Superior Court Fulton County, Georgia,
Ex-Officio Clerk City Court of Atlanta.

Case No._____ Atlanta Circuit,

_____ Term, 191_

Leo M. Frank

VERSUS

The State of Georgia

Bill of Exceptions

Filed in office Nov 30th 1913

Arnold Broyles Clerk.

Filed in office _____ 191_

_____ Clerk.

DAILY REPORT CO. PRINTERS, ATLANTA

18 File 10852
October Criminal Docket,
Term, 1913
SUPREME COURT OF GEORGIA.

Frank

vs.

THE STATE.

BILL OF EXCEPTIONS

Filed in office NOV 15 1913
W. E. Daley, D. C. S. C. Ga.

File

No. Atlanta Circuit,

Term, 191

Leo M. Frank,

VERSUS

The State of Georgia,

Transcript of Record

Filed in office 191

Clerk.

DAILY REPORT CO. PRINTERS, ATLANTA.

V. 10-852 Franks. State

(I N D E X.)

Bill of Indictment.....1

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345.

WRINKLED PAPER

(B I L L O F I N D I C T M E N T.)

The State, (). No. 9410.

Vs. (). Fulton Superior Court.

Leo M. Frank. (). May Term 1913.

True Bill.

L. H. Beck, Foreman,

24th day of May 1913.

Hugh M. Dorsey, Sol. Gen'l

J. N. Starnes, Porsecutor.

STATE OF GEORGIA,

FULTON COUNTY.

The Grand Jurors, selected,chosen and sworn for the County of Fulton, to-wit:

1. J. H. Beck, Foreman.

2. A. D. Adair, Sr.,
3. F. P. H. Akers,
4. B. F. Bell,
5. J. G. Bell,
6. Sol. Benjaman,
7. Wm. E. Besser,
8. C. M. Brown,
9. C. A. Cowles,
10. Walker Dunson,
11. Geo. A. Gershon,
12. S. C. Glass,
13. A. L. Guthman,
14. Chas. Heinz,
15. H. G. Hubbard,
16. R. R. Nash,
17. W. L. Percy,
18. R. A. Redding,
19. R. F. Sams,
20. John D. Wing,
21. Albert Boylston,

In the name and behalf of the citizens of Georgia, charge and accuse Leo M. Frank, of the County and State aforesaid, with the offense of Murder, for that the said Leo.M. Frank in the County aforesaid on the 26th day of April in the year of our Lord Nineteen Hundred and thirteen, with force and arms did unlawfully and with malice aforethought kill and murder one Mary Phagan by then

and there choking her, the said Mary Phagan, with a cord placed around her neck, contrary to the laws of said State, the good order, peace and dignity thereof.

Hugh M. Dorsey, Sol. Gen'l.

J. N. Starnes, Prosecutor.

Fulton Superior Court 1913.

WITNESSES FOR THE STATE.

J. W. Hurt, Dr.

L. S. Dobbs, (Police)

J. N. Starnes "

R. P. Barrett,

W. W. Rogers,

Harry Scott,

B. B. Haslett,

Grace Hicks,

E. F. Holloway,

N. V. Darley,

H. L. Parry,

J. M. Gantt,

William A. Gheesling.

Copy Bill of indictment and list of witnesses before Grand Jury, waived before arraignment. Full panel Waived.

Rosser and Brandon,

R. R. Arnold,

Herbert Haas, Deft's Attys.

(P L E A.)

July Term 1913.

The defendant Leo M. Frank, waives being formally arraigned, and pleads not guilty.

F. A. Hooper,
E. A. Stephens and
Hugh M. Dorsey,
Sol. Gen'l.
Rosser and Brandon,
R. R. Arnold,
Herbert Haas.
Deft's Attys.

:----------:

(V E R D I C T.)

We, the jury, find the defendant guilty.

Date August 25th, 1913.

F. E. Winburn, Foreman.

(S E N T E N C E.)

The State, (). No. 9410.

Vs. (). Indictment for Murder. Fulton Superior

Leo M. Frank. (). Court, May Term, 1913, Verdict of

(). Guilty, July Term, 1913.

Aug. 25, 1913.

Whereupon, it is considered, ordered and adjudged by the Court that that the defendant, Leo M. Frank, be taken from the bar of this court to the common jail of the county of Fulton, and that he be safely there kept until his final execution in the manner fixed by law.

It is further ordered and adjudged by the Court that on the 10th day of October, 1913, the defendant, Leo M. Frank, shall be executed by the Sheriff of Fulton County in private, witnessed only by the executing officer, a sufficient guard, the relatives of such defendant and such clergymen and friends as he may desire; such execution to take place in the common jail of Fulton County and that said defendant, on that day, between the hours of 10 o' clock A. M., and 2 o'clock P. M., be by the Sheriff of Fulton County hanged by the neck until he shall be dead, and may God have mercy on his soul.

In Open Court, this 26th day of August, 1913.

L. S. Roan,

J. S. C. St. Mt. Ct. Presiding.

Hugh M. Dorsey,

Sol Gen'l.

(M O T I O N F O R N E W T R I A L.)

State of Gerogia, (). Convition of Murder.
Vs. (). In Fulton Superior Court.
Leo M. Frank. (). Motion for New Trial.
:------:

And now comes the defendant in the above stated case and moves the court for a new trial upon the grounds following, to-wit:

1. The verdict is contrary to the evidence.

2. The verdict is contrary to the law.

3. The verdict is against the weight of the evidence.

4. The court, over the objection of the defendant, heard evidence of other transactions and tending to establish other crimes and offenses, wholly separate and distinct from the charge in the Bill of Indictment, to the injury and prejudice of the defendant.

Wherefore, for these and other good grounds to be urged upon the hearing, the defendant, Leo M. Frank, moves that said verdict be set aside and a new trial granted.

Reuben R. Arnold,
L. Z. Rosser,
Herbert J. Hass.
Attys. for Leo M. Frank, Movant.

:----------:

Read and considered. Let the foregoing motion for new trial be filed and let a copy thereof be served upon the Solicitor General.

It is ordered that the State show cause before me on the 4th day of October 1913, at my Chambers Thrower Building Atlanta, Ga. why the verdict should not be set aside and a new trial granted. In the meantime, and until after this motion may be heard, it ordered that the movant have the right [illegible] approved and filed a proper brief of the evidence in said case; and that should said motion be postponed, that such right to prepare and have approved and file such brief of the evidence shall exist and remain in the movant until such time as the motion may be finally heard.

In the meantime let the execution of the court's sentence be suspended. It is further ordered that until such time as this motion may be heard and decided, that the movant have full leave to amend this motion for new trial.

This 26th day of August, 1913.

L. S. Roan,

Judge S. C. St. Mt. Ct. Presiding

Filed in office this the 26th day of August, 1913.

F. M. Myers, D. Clk.

GEORGIA, FULTON COUNTY.

Service acknowledged, copy received all other and further service waived. This Aug. 27th, 1913.

F. A. Hooper,

Hugh M. Dorsey,

E. A. Stephens

Solicitor General Fulton County, Georgia.

We further agree to the order within giving time to prepare and file a legal brief of the evidence.

Aug. 27th, 1913.

Hugh M. Dorsey,

Sol. Gen'l.

(A M E N D E D M O T I O N.)

GEORGIA, FULTON COUNTY.

State of Georgia, No.

Vs. Fulton Superior Court.

Leo M. Frank. July Term, 1913.

And now comes the defendant in the above stated cause, Leo M. Frank, and amends his motion for new trial heretofore filed in this case, and says:

That the verdict in the above stated case should be set aside and a new trial granted for the following reasons, to-wit:

1. Because the Court erred in permitting the solicitor to prove by the Witness, Lee, that the detective Black talked to him, the witness, longer and asked him more questions at the police station than did Mr. Frank the day when he talked to the witness Lee at twelve (12) o'clock at night on April 29th.

At the request of Black and Scott, the detectives, Frank was induced to have an interview with Lee, the witness, for the purpose of eliciting information from him. The solicitor contended that Frank made no effect to find out anything from Lee, and to that end, sought to show and was permitted to prove by Lee that Black talked longer to him than did Frank at the time stated.

The defendant, then and there at the trial, objected to such evidence upon the ground that it was irrelevant, immaterial, and was a mere conclusion of the witness. The Court admitted the evidence, over such objections, and in doing so erred, because said evidence was unwarranted, immaterial and a mere conclusion of the witness and injurious to the defendant.

2. Because the Court erred in permitting, over objections the witness Lee to testify that Frank, on April 29th, when alone with him at the station house, talked to him a shorter time than did Mr. Arnold, one of Frank's attorneys, when he interviewed the witness just before the trial.

The detectives had induced Frank to talk to Lee alone on April 29th at the station house for the purpose of inducing Lee to talk. Mr. Arnold, in the presence of Lee's attorney, and the

jailer, had interviewed Lee just before the present trial.

The solicitor, over the objections of Frank's atty's that the evidence offered was immaterial, irrelevant, and the expression of an opinion, was permitted by introducing said evidence to draw a comparison of the time occupied by Frank and Arnold to their respective interviews, and, in doing so, the Court erred because the evidence offered was immaterial, irrelevant and the expression of an opinion.

3. Because the Court permitted the solicitor, over the objection of defendant made at the time the evidence was offered that the same was irrelevant and immaterial, to show by the witness J. N. Starnes that the witness Lee, the morning the body was found, while in the office of the pencil factory and when under arrest was composed. Said evidence was objected to as illegal, unwarranted and hurtful to the defendant and movant now says that its admission was error for the same reasons.

This evidence was hurtful, because used by the solicitor in his address to the jury in contrasting the deportment of Frank who was claimed to be nervous and excited.

4. Because the Court erred in permitting the witness Starnes, over objection of the defendant, made when the evidence was offered, because it was a conclusion, to say that his conversation with Frank over the telephone the morning of the finding of the body, was guarded---that he was guarded as to what he said.

This evidence was objected to as unwarranted and a conclusion, and movant here assigns its admission as error for the same reasons

Movant contends this was hurtful to the defendant, and there was a dispute as to what Starnes said to Frank in that conversation, and the solicitor contended that Frank's words and conduct in connection with that conversation was evidence of his guilt. Starne's statement that he was guarded in that conversation as to what he said, tended to impress the jury, that he was accurate in his memory as to the words of the conversation.

5. Because the Court admitted what purported to be a picture of the second or office floor, the street floor and basement of the factory. On this picture was traced red dotted lines extending from the back of the office floor, down the elevator to the basement, and down the basement near the back of the building. There

were, also, Greek crosses on the picture. It was conceded by the State that these dotted lines and crosses were no part of nor represented any part of the building but were put in the picture for the purpose of illustrating the theory of the State, as showing where the body was found and where it was carried.

The admission of the picture in evidence, with the lines and crosses thereon, was, when offered, objected to because, as movant contends, it was argumentative, representing and illustrating the State's view of the case by means of red lines and crosses, which was no part of, nor illustrated any part of the building.

The admission of said diagram and drawing was error for the same reasons as set out in the above objections, the objection being that the same was illegal and prejudicial, and movant assigns error in their admission for the same reason.

6. Because the Court, over objection made when the evidence was offered, that the same was a conclusion, permitted the witness Black to testify that in a conversation had with Frank months before the tragedy that he didn't remember anyt hing that caused him to believe that Frank was nervous, the hurtful purpose being to compare his then conduct with that after the tragedy.

This evidence here objected to was illegal, a conclusion, and prejudicial and movant says its admission was error for said reasons .

7. Because the Court, over objection made when the evidence was offered that the same was irrelevant, permitted the witness Black to testify that Frank had counsel, Messrs, Rosser and Haas about eight or eight thirty o'clock Monday morning while Frank was in the station house, brought there by detectives Black and Haslett.

Movant contends the employment of counsel, under the circumstances was no evidence of guilt; but the Court's conduct in submitting the fact to the jury was greatly hurtful to the defendant.

said evidence was illegal, irrelevant and prejudicial and its admission over objection is here assigned as error for said reasons.

8. Because the Court refused to permit the witness Black to testify on cross examination that when he found a bloody shirt in the bottom of a barrel in Newt Lee's house, that he carried the shirt to the station house showed it to Lee, and, when Lee was asked by the witness if the shirt was his, the solicitor objected that the witness should not be allowed to answer the question: "Did he (Lee) say that the shirt was his?"

The Court would not permit the witness to give Lee's answer that the shirt was his.

This answer of Lee's was, as movant contends, part of the res gestae of the shirt transaction, and Lee's answer ought to have been heard.

The Court erred, as movant contends, in ruling out the answer of Lee and not allowing it to come out as a part of the entire transaction.

9. Because the Court, over objection made by the defendant at the time the same was offered, that it was immaterial and irrelevant, permitted the witness Darley to testify that on the morning the body was found Newt Lee was composed.

Defendant objected to this evidence as illegal, irrelevant and prejudicial to defendant which objection was overruled and movant assigns its admission as error for said same reasons.

This evidence was not only irrelevant and imm aterial as movant contends but hurtful, because this evidence was heard upon the theory of comparison between the conduct of Lee and Frank.

10. Because the Court erred in failing, refusing and declining upon motion of the defendant made while the witness Conley was on the stand, to rule out, withdraw and exclude from the jury each and all of the following questions and answers of the witness Conley:

Q. "What did he mean?"

A. "Well, what I taken it to be, the reason he said he wasn't built like other men. I seen him in a position I hadn't seen had any other man in that was got children."

Q. "What position?"

A. "I have seen Mr. Frank in the office there about two or three times before Thanksgiving and a lady was in the office, and she was sitting down in a chair and she had her clothes up to here

(upto her waist) and Mr. Frank was down on his knees, and she had her hands on Mr. Frank and I found them in that position."

Q. "When you came into the office before Thanksgiving day, now, when the lady was sitting in the chair?"

A. Yes, sir: he saw me when he came out of the office, he saw Me."

Q. What was said when they saw you?"

A. " When Mr. Frank came out of the office Mr. Frank was hollering 'Yes, that is right, that is right' and he said, 'That is all right, it will be easy to fix it that way.'"

Q. " Well, did you ever see him on any other occasion?"

A. "Yes, sir; I have seen him on other times there."

Q. "What other occasions?"

A. I have seen Mr. Frank in the packing room there one time with a young lady lying on the table."

Q. How far was the woman on the table?"

A. "Well, she was on the edge of the table when I saw her."

The motion was made while the witness Conley, was on the stand, and before any cross examination had been had upon either of the circumstances referred to in said questions and answers, but after cross examination upon other subjects had progressed a day and a half. The motion to rule out, withdraw and exclude was made because, as stated to the Court when the motion was made, said questions and answers were immaterial, irrelevant, illegal, prejudicial, and dealing with other matters and things and crimes irrelevant and disconnected with the issue in the case then on trial.

Movant contends this evidence was highly prejudicial, and the failure of the Court, upon proper motion, to rule it out was a great injury to the defendant. And the failure of the Court to rule out said prejudicial and irrelevant and immaterial evidence is here assigned as error and a new trial should be granted.

11. Because the witness Conley, at the instance of the solicitor, was permitted to testify that he had seen Frank in a pos-

ition with women than he had not seen any other man in that has children; that he had seen Frank in the office of the Pencil Co., about two or three times before Thanksgiving, and a lady was in the office and she was sitting down in a chair and she had her clothes up about her privates, and Frank was down on his knees, and she had her hands on Frank; that Frank saw Conley when he came out of the office, that when Frank came out of the office he was hollering "Yes, sir, that is right, that is right" and he said "That is all right, it will be easy to fix it that way;" that at another time he saw Frank in the packing room of the factory with a young lady lying on a table---she was on the edge of the table when he saw her.

While Conley was on the stand, and before he was crossed about seeing the circumstances testified about, and after cross examination upon other subjects had been had for a day and a half, counsel for the defendant moved the Court that the next above stated testimony of the witness Conley be ruled out, withdrawn and excluded from the jury, stating at the time that such motion ought to be granted, because the testimony was irrelevant, immaterial, illegal, prejudicial, and dealing with other matters and things, and crimes, irrelevant and disconnected with the issues in this case.

The Court declined to rule out, withdraw, or exclude this testimony from the jury, but permitted the same to remain before the jury.

The action of the Court was erroneous and highly prejudicial to the defendant, and demands a new trial.

Such action of the Court was error because said evidence was illegal, irrelevant and hurtful to the defendant and involved other transactions not legitimately under investigation, and the same amounted to accusing the defendant of other and independent crimes.

B. Because the [illegible] Conley, [illegible], testified that he watched for Frank, at the Pencil factory, four times on Saturdays, not on the day of the murder, and once on Thanksgiving day 1913, while Frank was with women in his office, detailing certain signals by which the witness Conley was to look and

open the door. When the first question was asked by the solicitor seeking to elicit whether witness had ever seen Frank up there in his office doing anything with young ladies before April 26, 1913, the defendant objected on the ground that the evidence sought was irrelevant and immaterial. The Court ruled that the evidence would be immaterial, but further questions were asked by the solicitor and elicited the evidence here complained of.

While Conley was still on the stand, and after cross examination a day and a half on other subjects, defendant's counsel moved to rule out, exclude and withdraw from the jury all the testimony, both direct and on cross, detailing Frank's association with women and Conley's watching at other times than the Saturday of the murder, to-wit: April 26, 1913. Said motion was made upon the grounds stated and argued at the time the motion was made, that such testimony was immaterial, irrelevant, illegal, prejudicial, and dealt with other matters and things and crimes irrelevant to and disconnected with, the issues on trial on this case.

The Court declined the motion made at the time upon the grounds, as stated, and in doing so erred, because the evidence sought to have been ruled out for the reason stated, and the same amounted to accusing the defendant of other and independent crimes.

13. Because the Court, upon motion made when the witness Conley was still on the stand, declined to rule out, exclude and withdraw from the jury each and all the below questions propounded to witness Conley, and his answers thereto:

Q. Now, tell what kind of work you had done for him the other Saturdays. A. I always stayed on the first floor, like I stayed on the 26th of April, and watched for Mr. Frank, while he and a young lady would be on the second floor chatting.

Q. You say chatting. Do you know what they were doing? A. No, sir. I don't know what they were doing. He only told me they wanted to chat.

Q. Did you ever see him up there doing anything with young ladies?

A. Well, I have---

Q. Well, what would you do before when young ladies come there?

A. I would sit down on the first floor and watch the door for him.

Q. And watch the doors for him? A. Yes, sir.

Q. How many times did you watch the door previous to Saturday, the 26th of April, 1913?

A. Well, I couldn't exactly tell you; it has been several times I watched for him.

Q. Who was there when you were watching the door? A. Well, I don't know, Sir, who would be there when I watched the door, but there would be another young man and another young lady there during the time I was at the door; a lady for him and one for Mr. Frank.

Q. Now, was Frank ever there alone? A. Mr. Frank was there alone once, and that was Thanskgiving day, that I watched for him.

Q. Well, do you know or not the lady--did any woman come there that day? A. Thanksgiving day?

Q. Yes. A. Yes, sir.

Q. What kind of a looking woman? A. She was a tall, heavy built lady.

Q/ What did you do on that occasion? A. I stayed down there and watched the door, just as he had told me to do this last time.

Q. Then what was done? A. Well, after the lady came and he stamped for me, I went and unlocked the door as he said. He told me when he got through with the lady he would whistle, and when he whistled for me to go and unlock the door.

Q/ That was on Thanksgiving day of what year? A. Of last yesr, 1912.....

Q/ He says: "What I want you to do, I want you to do, I want you to watch for me today as you have on other Saturdays".

A. And I says: "All right."....

[illegible] did before."

Q. What did he mean? A. I have seen Mr. Frank in the office there about two or three times before Thanksgiving, and a lady

wasin the office, and she was sitting down in a chair, and she had her clothes up to here (indicating), and Mr. Frank was down on his knees, and she had her hands on Mr. Frank, and I found them in that position.

Q. Well did you ever see him on any other occasion? A. Yes, I have seen him another time there.

Q. What other occasion? A. I have seen Mr. Frank in the packing room one time with a young lady laying on the table.

Q. How far was the woman on the table? A. Well, she was on the edge of the table when I saw her,--------

Q. Do you know the name of the woman that was up there with Mr. Frank? A. Thanksgiving day?

Q. Yes, A. No, sir, I don't know her name.

Q. Do you know the name of the other woman? A. No, sir. I know the young man's name that was with one of the ladies, but I don't know the other lady's name. I know where she lives at.

Q. What is the name of the man? A. That man's name is Mr. Dalton.

Q. Now, what kind of looking woman was it that you saw there Thanksgiving day in Mr. Frank's office. A. Well, she was a tall built lady, heavy weight, she was nice looking, she had on a blue looking dress with white dots in it, and she had on a greyish looking coat with kind of tails to it. The coat was open like that (indicating), and she had on white slippers and stockings.

Q. Did Mr. Frank see you that time? A. Thanksgiving day?

Q. Yes, A. Yes, sir, he told me to come to the office---to come to the factory.

Q. When you come up into the office before Thanksgiving day now, when the lady was sitting in the chair? A. Yes, sir. He saw me when he come out of the office, he saw me.

Q. What was said when they saw you: A. When Mr. Frank come out of the office he was hollering: "Yes, that is right, that is right", and he said: "That is all right, it will be easy to fix it that way".

CROSS EXAMINATION.

Q. Now, you said you watched for Mr. Frank? A. Yes, sir.

Q. When was the first time you ever watched for Mr. Frank ?

A. The first time I ever watched for Mr. Frank alone and knowed he was in the office------

Q. When was the first time you ever watched for Mr. Frank alone or with somebody else? Don't make any difference. A. I couldn't exactly give you the------

Q. Tell us the best you can? A. Some time during last summer, when I was watching for him.

Q. That was the first time, now? A. Yes, sir.

Q. Whereabouts in the summer; what part of the summer did you do that watching that time? A. Somewhere about in July.

Q. That's the first time; there was somebody with him that time? A. Yes, sir. Somebody was with him all the time, off and on.

Q. Let's take the first time, now; what did Mr. Frank say to you that time; what did he say---what did he say to get you to watch for him? A. I would be there sweeping, and Mr. Frank come out and call me in the office.

Q. What? A. I would be there sweeping and Mr. Frank come out and call me in the office.

Q. When was the first time he ever did that? A, That was on Saturday he done that.

Q. He never had called you in there before when you were sweeping, except on Saturday? A. He called me in there but never talked to me about that matter.

Q. Did he talk to you about anything? A. Yes, sir.

Q. About what? A. Something about the work, something like that.

Q. You mean during the week? A. No, sir; he talked to me them Saturdays about it.

Q. When was the first time he called you in there to talk about the work or anything else? A. How do you mean?

Q. On Saturday, when was the first time he called you in there to talk to you about the work or anything else------

I don't know about that.

Q. Tell us about that? A. That was right after I started work

there when he called me and talked to me about the work.

Q. And that was on Saturday? A. Yes, sir, that was on a Saturday.

Q. About what time, now? A. I don't know somewhere about three o'clock, though.

Q. Sometime about three o'clock? A. Yes, sir.

Q. What was your Saturday hours, Jim? A. I always generally have to work from the time I get back there until half past four that evening.

Q. What time would you usually get back there? A. I would leave away from there about half pass twelve, ring out the clock, and come back about half past one or two o'clock.

Q. Would you ring in again? A. Yes, sir; sometimes I would and sometimes I wouldn't----

Q. The first time you say you ever watched, you say you watched for Frank and somebody else last July? A. Yes sir.

Q. You don't know who the man was? A. Yes, sir, I know who the man was.

Q. Who was he? A. Aman named Mr. Dalton.

Q. Where is he? A. I don't know where he is now.

Q. How do you spell that? A. I don't know how you spell it.

Q. What did he do? A. A young lady that worked at the factory-- I don't know what her name was---she would go off and get him and bring him in there.

Q. You don't know where he lived? A. No, sir; I don't know where he lived, but I know where she lived.

Q. How come him to tell you who she was? A. She was the one told me his name.

Q. Where is the young lady? A. I don't know, sir, if she's anywhere in the room and if she'll stand up I can tell you if it is her.

Q. Give us her name? A. I don't know , sir, what her name is; the detectives know the name, I don't.

[illegible] tives tell you [illegible] r; they didn't tell me who she was, I described to them where she lives at

Q. Where does she live? A. She lives on West Hunter Street.

Q. Where? A. Between Hunter and Haynes Street, around about Magnolia Street, down there.

Q. How come you to know she lived there? A. Because I passed her house every morning.

Q. And the man was named Dalton? A. Yes, sir:

Q. Who was with Mr. Frank? A. The lady that was with Mr. Frank was Miss Daisy Hopkins.

Q. Where did she live? A. I don't know, sir, where Miss Daisy Hopkins lived.

Q. Where did she work? A. She worked up on the fourth floor.

Q. Do you know where she is now? A. No sir.

Q. Now, what time of day was that? A. It would always be somewhere about three or three thirty.

Q. Where did Mr. Frank tell you to watch, that time? A. I would be up there sweeping, and Mr. Frank---------

Q. That time---that particular time, I mean? A. Well, I would be sweeping.

Q. I'm talking about that time----that particular time? A. When he told me to watch?

Q. Yes, what did he say to you when he told you? A. I'm going to explain to you now-------

Q. That particular time, now? A. Yes, sir.

Q. Give it to me, now? A. I would be there sweeping---

Q. Oh, don't give me what you would be doing. ~~I want you would be doing~~. I want to know about that particular time? ~~A. I was at the factory.~~

Q. Where? A. Sweeping on the second floor.

Q. Now, what time was that? A. Somewhere about three o'clock or three thirty.

Q. Somewhere about three or three thirty? A. Yes, sir.

Q. Then what happened? A. Well, there would be one lady in the office.

Q. I am talking about that particular time. Jim---the first time he ever talked to you there, you were in the pencil factory? A. Yes, sir.

Q. When Mr. Frank called you? A. Yes, sir.

Q. You were on the second floor? A. Yes, sir.

Q. Then Mr. Frank called you and then you went to Mr. Frank's office? A. Yes sir.

Q. Was there a woman in there with him ? A. Yes, sir, a lady was in there with him.

Q. Called you in the presence of the lady? A. Yes, sir.

Q. Talked to you in the presence of the lady? A. Yes, sir.

He talked to me in the lady's presence.

Q. And that was Miss Daisy Hopkins? A. Yes, sir.

Q. And that was about three o'clock? A. Or half past three.

Q. In July last? A. Yes, sir.

Q. What did Mr. Frank say to you in that lady's presence? That's the time (first) time he ever talked to you about that matter, what did he say to you? A. Yes, sir; he says: "Did you see that lady go out there?"-----

Q. Why, I thought you said the lady was present? A. Yes, sir, this lady was present. He would say: "Did you see that lady go out there"? I say: "Yes, sir", and he says: "You go down there and ~~see nobody~~ don't come up here, and you'll have a chance to make yourself some money.

Q. And the lady was present? A. Yes, sir:

Q. Where was the other lady? A. The other lady gone on out and to get that young man.

Q. She went with the man? A. No, sir, she went out by herself, to get the man and come back with the man.

Q. How long was she gone? A. I don't know, sir, how long she was gone.

Q. And that was about half past three? A. Yes, sir.

Q. The beginning of that transaction was about half past three? A. Yes, sir.

Q. How long was she gone? A. I don't know, sir, how long she was gone.

Q. You don't know how long she was gone? A. No, sir; I don't know how long she was gone.

Q. Was she back after awhile? A. Yes, sir.

Q. She came back after awhile and brought a man with her, and that [illegible] A. Yes, sir.

Q. And Dalton's name you don't know? A. Yes, sir; his name was Mr. Dalton.

Q. I know, but you don't know where he lives--nothing of that kind? A. No, sir.

Q. When this young lady went off and came back and brought Dalton back, where didyou see her again? A. I saw her and Mr. Dalton when the come in at the door.

Q. You were watching then? A. Yes, sir.

Q. Then where did they go? A. Upstairs to Mr. Frank's office.

Q. Did you see them go to Mr. Frank's office? A. I heard them walking in Mr. Frank's office.

Q. Then how long did they stay in Mr. Frank's office? A. They didn't stay in there long, ten or fifteen minutes I reckon.

Q. Then where did they go? A. They came back down, and she say: "All right, James."

Q. Then his name was James Dalton? A. No, sir; that was talking to me---- said all right to me.

Q. You saw them go in the factory and heard them go to Mr. Frank's office, and how long did they stay there? A. About fifteen minutes, I reckon.

Q. Then all of them came down together? A. No, sir. They didn't all come down together--just this lady and Mr. Dalton.

Q. Then how long before Mr. Frank came down? A. He was the last one that came down.

Q. How long? A. About an hour after that.

Q. You never heard any of them come out of Mr. Frank's office after they went in? A. Yes, sir; this lady and this man come back down.

Q. They came back and went down? A. No, sir, they didn't go out. She came down and say: "All right, James", and I would say: "ll right". and a place on the first floor that leads into another department, and after you get into this other department, there's a trap door and stairway that leads down in the basement, and they pull out that trap door and go down in the basement.

Q. And that time, she came down and says: "All right, James"?

A. Yes, sir.

Q. She knew you? A. Yes, sir.

Q. Because she worked in the office? A. No, sir, she didn't work in the office, she worked on the fourth floor.

Q. Then you went through that door--a door right behind the

elevator? A. No, sir, there isn't a door back of the elevator; there's a big wooden door, just a step there.

Q. I know, but it goes back in the back there? A. Yes, sir.

Q. Then you opened that door? A. Yes, sir.

Q. Then came back and opened that trap door? A. I came and pulled up the trap door.

Q. And then they went down there? A. Yes, sir.

Q. She said "All right, James"? A. Yes, sir.

Q. Then you went and opened that door? A. Yes, sir.

Q. She didn't tell you to open it? A. Yes, sir; she said, "All right, James"--something like that.

Q. She said All right, and then you opened the door? A. Yes, sir.

Q. What made you open the door? A. Because she said she was ready. I knowed where she was going; Mr. Frank told me to watch.

Q. Mr. Frank told you to watch? A. Yes, sir.

Q. But he didn't tell you where they were going? A. Yes, sir, he told me where they were going.

Q. How came him to tell you that? A. I don't know, sir.

Q. When did he tell you that? A. That day.

Q. That they were going to the basement? A. Yes, sir.

Q. That he was going to stay in his office? A. He didn't say where he was going to stay.

Q. Well, he stayed there? A. As long as I stayed there I didn't see him go out.

Q. She said all right, and went through that door? A. Yes, sir.

Q. Opened it and they went down? A. Yes, sir.

Q. You shut that trap door? A. Yes, sir.

Q. And that was in July? A. Yes, sir.

Q. And the first time that ever happened? A. Yes, sir.

Q. First time anybody ever asked you or talked to you about it? A. Yes, sir.

Q; Now, they went down the basement? A. Yes, sir.

Q. How long did they stay there? A. I don't know, sir how long they stayed there.

Q. What became of them? A. Well, they came back up.

Q. About what time? A. I couldn't give no time, because I don't know what time it was when they went down there.

Q. Well, about what time? A. I don't know, sir;

I couldn't give you what time they came back up.

Q. It was after 3:30 when this whole thing started? A. Yes, sir it was after 3:30 when this whole thing started.

Q. He told you to godown; they came up after a while?

A. Yes, sir, they came up after a while.

Q. Came up the same way they went down? A. Yes, sir.

Q. Up through the same door? A. Yes, sir.

Q. You kept that door locked all the time? A. No, sir, I didn't keep it locked, I just kept it shut and stayed there by it.

Q. Stayed there the whole time? A, Yes, sir.

Q. And never left? A. No, sir.

Q. Well, what did they do after they came up through the door?

A. After they came up through the door me and Mr. Dalton stood and talked at the steps. Mr. Dalton gave me a quarter and he went out laughing, and she went up the steps.

Q. Where did she go? A. She went and stood at the top of the steps a little while first, before she ever went to the office.

Q. Did she go to the office? A, Yes, sir, she went to the office.

Q. How do you know she did, you couldn't see her go there, could you? A. No, sir, I couldn't see her go in the office, but I could hear her go there. I heard her walking in there.

Q. How long did they stay before they came down?

A. Didn't stay very long before they came down.

Q. What next happened? A. They came down and left, and then Mr. Frank come down after they left away.

Q. What time did Mr. Frank leave? A. I don't know, Sir, what time Mr. Frank left.----

Q. Give us the best you can? A. Frank left some time about half past four, I believe.

Q. Then they stayed there an hour. A. I don't know, sir; I guess so.

Q. Then Mr. Frank left, and you locked the door and youleft?

A. No, sir, I left before he did. He came down and gave me a quarter out of his pocket. He says: "Is that all right?", and I say:

say:"That's all right". and then left.

Q. Then he came out behind you and left?A. Yes,sir.

Q. Now, that's the first time? A. Yes, sir.

Q. Now, when was the next Saturday? A. The next Saturday was mighty near the same thing.

Q. Well, what was the next Saturday; I didn't ask you whether it was the same thing or not? A. That was about two weeks after that.

Q. Was that in August or in July? A. Well, it was about the last of July or the first of August.

Q. Well, do you remember the date? A. No, sir, I don't remember the date at all.

Q. Where did you get your money that time; did you draw it?

A. Yes, sir, I drawed my money that time.

Q. Go up and draw it yourself? A. I disremember whether I drawed it myself or not.

Q. Can't remember anything about that? A. No, sir.

Q. The first time it happened, did you draw it yourself?

A. I can't remember whether I did or not.

Q. You can't remember that? A. No, sir.

Q. Tell us the next Saturday- You think it was about two weeks after that? A. Yes, sir.

Q. Now, when did Mr. Frank first mention it to you that Saturday? When did he first mention it, that Saturday, to you?

A. Mr. Frank mentioned it to me the same Saturday I was there.

Q. About three o'clock? A. I don't know, sir, what time it was.

Q. About half past two, was it? A. About half past two. I guess, that Saturday.

Q. About half past two, you think, that Saturday?

A. Yes sir.

Q. Whre were you then? A. At the factory.

[redacted]

Q. Mr. Frank came and got you? A. No, sir, he told me that morning before ever they paid off.

Q. What time was that he told you? A. I don't know, sir, it was near twelve o'clock when he did tell me.

Q Where did he tell you that? A. In the box room

Q. Anybody else present? A. No, sir, not as I knows of.

Q. What were you doing in there? A. What was I doing in there, I was looking after the boxes.

Q. What did he tell you then? A. He told me, "Now you know what you done for me last Saturday"-

Q. He told you: "You know what you done for me last Saturday"? A. The other Saturday. I says: "Yes, sir, I remember". He says: "I want to put you wise to this Saturday". I says; "All right, sir, what time". He says: "Oh, about half past". I says:"All right, sir".

Q. You remember that distinctly? A. Yes, sir.

Q. What time did he go to dinner that day? A. I don't know, sir, what time he went to dinner that day; I wasn't there when he went to dinner.

Q. What time did he get back that day? A. That was somewhere about quarter past two. I saw him going up the steps with his clothes and his hat on. I don't know where he had been.

Q. What was the next that happened? A. He went in his office next that happened.

Q. Then what was the next that happened? A. Mr. Hollaway, he came on out.

Q. Mr. Hollaway was there? A. Yes, sir.

Q. That was half past two o'clock? A. No, sir, it wasn't half past two.

Q. I thought you said he always left about half past two? A. No, sir, I didn't say he always done it.

Q. Now, when was that; give us the best estimate about it? A. Its pretty hard to give the best estimate about the time, because I wasn't looking at the clock at all.

Q. What was the next? A. After Mr. Hollaway left away, Miss Daisy Hopkins come on in there.

Q. What happened next? A. She came into his office.

Q. [illegible] come into [illegible] that time.

Q. Did she see you? A. Yes, sir.

Q. Then what happened? A. Well, Mr. Frank come out and popped his finger and bowed his head like that and went back in the office.

Q. Where were you at? A. I was standing there by the clock.

Q. He popped his hand? A. No, sir, he popped his finger.

Q. He popped his finger and bowed to you? A. Yes, sir.

Q. Then you went down? Yes, sir, then I went down.

Q. And stood by the door? A. Yes, sir.

Q. Didn't lock it? A. No sir, I didn't lock it; Ishut it.

Q. Then what next happened? A. I don't know, sir, what next happened.

Q. Did you hear Mr. Frank come out of his office at all?

A. No, sir, I didn't hear Mr. Frank come out of his office at all.

Q. You could have heard him if he went out? A. No, sir, I couldn't have heard him if he went out.

I couldn't have heard him if he went out.

Q. Well, how comes it you could hear him go in there and not hear him come out? A. Because I was up there on the floor when she went in there, in the office.

Q. When you went down, she was in Mr. Frank's office? A. No, sir, I was standing at the clock and saw her go into Mr. Frank's office.

Q. Then you went down and watched? A. Yes, sir, I went down and watched.

Q. Did you hear her come out of his office? A. No, sir.

Q. Didn't you say a while ago that, while you were at the door you heard these other people coming out of his office?

A. No sir, I said this--this was what I said: after I got to the top of the steps, I could hear them going into his office.

Q. I know but you said this lady went and got a fellow; you stood by the door and heard them going into his office. A. No, sir, I said her and this man's foot steps, I heard them go into Mr. Frank's office. I said I stood down at the door and watched.

Q. You were watching when they came in, didn't you say?

A. Yes, sir, I said I was watching when they came in.

Q. You could see them when they came in there? A. Yes, sir, I could see them when they came in there, and I said I went up and heard the foot steps going in Mr. Frank's office.

Q. Didn't you sit there and watch all the time? A. I didn't

sit there at the door until he notified me to do that.
Q. I'm talking about the time she went and got that man and came back? A. I was standing by the door, yes, sir.
Q. Stood there from that on? A. No, sir, I didn't stand there from that on.
Q. What did you do? A. I stood there about the trash barrel then.
Q. On the first floor? A. Right there by the side.
Q. And then you heard them going back? A. I heard them go to Mr. Frank's office, yes,sir.
Q. When you were standing at the door, you couldn'tsee them go into Mr. Frank's office? A. No, Sir, I couldn'tsee them go into Mr. Frank's office.
Q. Wasn't you at Mr. Frank's office at that time? A. Not at the door, no, sir, when you are at the door you aint there at Mr. Frank's office.
Q. When do you hit his office? A. When you hit that trash barrel.
Q. Now, did anybody else come that day? A. This second time?
Q. Yes, No sir, nobody else didn't come
Q. How long did Mr. Frank stay there that time? A. I don't know sir how long he stayed there that time.
Q. About how long? A. Stayed there that time about a half a hour, I reokon, something like that.
Q. Then the girl went out? A. Yes, sir; then the girl went out.
Q. Mr. Frank came and went out? A. No, sir, he called me up there then asked me was I there: I told him yes sir, I was about through now.
Q. Did he know whether you were through or not? A. I don't know, sir, whether he did or not.
Q. He gave you some money? A. He gave me half a dollar.
Q. And the other time they didn't give you but a quarter.
Q. Then you left? A. Yes, sir.
Q. Give the next time? A. Pretty hard for me to remember.
Q. It was Thanksgiving day, the next time, wasn't it?
A. No , sir, it wasn't Thanksgiving day, the next time; I had

watched for him and Mr. Dalton, too, before that Thanksgiving day.

Q. Give us the best you can, of the next time? A. That was somewhere along in the winter time; I dont know, sir, the exact time.

Q. Well, Thanksgiving time is winter time, aint it Jim?

A. Yes sir, but this is before Thanksgiving.

A. Yes, sir, but this is before Thanksgiving.

Q, How many time before Thanksgiving? A. I watched for him there three times before Thanksgiving Day.

Q. Well, you've given me two of these times? A. Yes, sir.

Q. When was the the next one--about when? A. I don't know. sir; I couldn't exactly tell. Somewhere about the middle of August. I guess, or the last part of August.

Q. You said it was winter, didn't you? A. Well, that's somewhere near the winter, aint it.?

Q. Might cold about the middle of August, aint it?

A. I said it was somewhere------

Q. Beginning to be mighty cold about the middle of August, aint it? A. No sir, not so cold.

Q. Pretty cold, though, aint it? A. No sir, not so cold.

Q. But its obliged to be cold thought, aint it?

A. No sir, not so cold.

Q. Pretty cool though? A. No sir, not so cold. Some days is cool.

Q. What made you say it was near winter though, Jim? A. It's near winter.

Q. All right, how did that happen. Just give it to me like it happened. What time did that happen? A. I don't know. sir, what time it was that it happened.

Q. About what time? Sometime after Mr. Frank come back from dinner; I don't know what time it was.

Q. About what time? A. I don't know, sir.

Q. What did he tell you-He wanted you to watch that time?

A. He told me that time on the fourth floor.

Q. What time wasthat? A. This was somewhere---I don!t know, sir, what time; I couldn't exactly tell.

Q. It was morning or evening? A. It was in the evening.

Q. About what time? A. I don't know, sir. I couldn't tell you exactly.

Q. Where was you when he told you? A. Right at the elevator.

Q. Was it before twelve o'clock? A. I don't know, sir, whether it was twelve o'clock or not.

Q. After twelve? A. I don't know whether it was after twelve or not.

Q. You don't know anything about that; you can't remember that? A. No sir.

Q. Anybody standing around there then? A. There was Gordon Bailey standing there.

Q. That's Snowball? A. Yes, sir.

Q. Anybody else there? A. Not to my knowing, it wasn't

Q. Wasn't the office force there at that time? A. They were not standing at the elevator; theywere back at work.

Q. It must have been before twelve o'clock then, if they were back at work? A. I guess so; I don't know whether it was twelve or not.

Q. What did he tell you then? A. He told me: "I want to put you wise again for today".

Q. "I want to put you wise again for today"? A. Yes sir.

Q. That is the same words he used every time? A. He didn't use that every time, but he used that more often than anything else.

Q. What else did he say. He hadn't seen you but three times; hadn't watched for him but three times--two times before that? A. Yes, sir.

Q. You say that's the word he usually used? A. I don't know about the usual, but he used that the other two times.

Q. Up to that time he used the same words every time, that: "I want to put you wise," Is that correct? A. Yes, sir. but he said sometimes in a funny way.

Q. Well, sometimes. But you said you hadn't watched but three times, and every time he said them: "I want to put you wise" He done that, didn't he, Jim? A. And he would say that and say it in another way, too.

Q. But the three times, he said: "I want to put you wise"

A. Yes sir, the three time he said: "I want to put you wise"

Q. And that was the three times--say it the three times up to that time? A. Well, yes sir, to my rememberance it was.

Q. You don't know that then? A. No sir, I don't know that.

Q. Well, you said that though? A. Yes, sir, I said it.

Q. Did he say anything else to you but "I want to put you wise" at that time and place? A. Yes sir, "I want to put you wise like I been doing the other Saturdays down there". I said: "All right, sir"

Q. All right, now, what time did that happen? A. Well, just happen in the evening.

Q. About what time? A. I don(t know, sir, what time it happen.

Q. Give us the best estimate you have got? A. Well, some time half past, I reckon.

Q. Sometime half past, half past what-half past two or half past three? A. It was half past two, I reckon.

Q. He came back you say. What made him come; did he come back and hunt you? A. No, sir, he didn't hunt me.

Q. Where were you? A. I was standing by the office when he got there.

Q. Then he came in there with you? A. Yes, sir.

Q. What did he say to you? A. He told me, he says: "She be here in a minute."

Q. Then where did you go? A. I stayed there at the office.

Q. Did you see her come in there? A. Yes, sir. I seed her come in there.

Q. Who was she? A. She was a lady what worked on the fourth floor, but I don't know her name.

Q. The same woman? A. No, sir, she's not the same woman.

Q. Miss Daisy had been there twice, and this was a new woman? A. Yes, sir.

Q. Does she work there now? A. I don't know, sir, whether she is or not. I'm not working there, and I [illegible] who all's working there now.

Q. What kind of looking lady was she? A. Nice looking lady, kinder slim.

Q. What kind of eyes did she have? A. I don't know, sir, I never paid no attention to hereyes.

Q. What kind of hair? A. I don't know, sir, exactly-had hair like Mr. Hooper there got.

Q. How do you know Mr. Hooper so well; you seem to know him pretty well, don't you Jim? A. No,sir, I don't know, sir, I have seen Mr. Hooper before.

Q. He had a good deal to do with you down there? A. No sir, I seen him once when he come down to the cell to see me.

Q. Was she grey haired, like Hooper-you say she had hair like Hooper's? A. Yes sir, she had hair like Mr. Hooper's.

Q. Aint that a gray-headed fellow, sorter measely and broken down with age? A. Don't look like he's gray to me.

Q. You have been right close to him, too, haven't you? A. I've been right close to him, but not to pay no attention to his hair.

Q. Well, she had hair like Hooper? A. Yes sir.

Q. If he's grey-haired, she had too? A. Well, she had hair like Mr. Hooper's.

Q. Was she blonde or brunette? A. I don't know, sir, what you mean by that?

Q. You don't know what a blonde is? A. No sir.

Q. You don't know what a brunette is? A. No sir.

Q. Did she have light hair? A. She had hair like Mr. Hooper's

Q. What sort of clothes didshe have on? A. She had a green suit of clothes.

Q. Green all over? A. As far as I could see.

Q. What kind of shoes and stockings did she have on?

A. I didn't pay no attention to her shoes and stockings.

Q. But Miss Daisy Hopkins, what sort of clothes did she have on the first time that she came there? A. The first time that she came there she had on a black skirt and a white waist.

Q. What kind of shoes and stockings? A. I didn't pay no attention to what kind of shoes and stockings she hadon.

Q. Didn't you tell Mr. Dorsey, what kind of shows and stockings she had on? A. No sir, I told him the lady that was there

Thanksgiving Day had on white shoes and stockings.

Q. Now, the next day what did she have on? A. The next day she had on the same thing, black skirt and white waist.

Q. She had on exactly the same thing? A. Yes sir.

Q. And this other---There was a girl dressed in green all over? A. Yes, sir, there was a girl dressed in green all over, this last one.

Q. And you don't know who she is? A. No sir; she worked up there on the fourth floor, but I don't know her name.

Q. You don't know whether she works there now or not? A. No sir, I don't know whether she works there now or not. I haven't been there----

Q. She worked there when you left? A. She had been there that morning: I don't know whether she was there that evening.

Q. And you saw here there? A. Yes sir.

Q. Did she have on a green dress that morning? A. No sir, she didn't have on a green dress that morning.

Q. What kind? A. A dirty black dress with paints on it.

Q. Well, they all have that don't they? A. Yes sir, when they are at work.

Q. You didn't see her when she had her working dress off? A. No sir, I didn't see her that day when she had her working dress off.

Q. You never inquired who she was? No sir, I never inquired who she was because it wasn't none of my business.

Q. Did she speak to you? A. No sir.

Q. Well, she's the one anyway? A. Yes sir.

Q. She was the other one? A. Yes sir.

Q. Now Jim, don't everybody in that factory know Jim Conley? A. No sir, didn't everybody in that factory know me.

Q. Given me one of them? A. I don't know, sir, I don't know whether they all knew me or not.

Q. Didn't the girls go to [illegible] A. No sir, the girls never did.

Q. You swept on the fourth floor? Q. Yes sir, I swept on the fourth floor a while. 31

Q. How long did you sweep on the fourth floor? A. Been

sweeping up there ever since last January.

Q. You saw that little girl every day, that went to meet Mr. Frank, didn't you? A. This last one.

Q. Yes, A. I didn't see her every day, but I seen her there.

Q. Saw her many times and didn't ask who she was? A. No sir, I didn't ask who she was.

Q. Don't know who she was? A. No sir, I don't know who she was.

Q. Now, when she came in, did she see you when she came in? A. Yes sir, she seen me as she come in.

Q. Where did she go? A. She went to Mr. Frank's office.

Q. Then you went and watched? A. Yes sir, then I went and watched.

Q. You didn't see them leave nor hear them leave Mr. Frank's office? A. No sir, I didn't see them leave and I didn't hear them leave Mr. Frank's office.

Q. How long did you stay there? A. Half an hour, I reckon.

Q. And she cameout? A. Yes sir.

Q. What became of Mr. Frank? A. He came out and left me up in the office and he went out somewhere. I don't know where he went, and then he came back and says: "That's all right, I didn't take out any money".

Q. He went out somewhere? A. Yes sir.

Q. You mean he went out in town somewhere? A. I don't know whether he went out in town or not.

Q. Didn't you open the door? A. Yes, sir, I opened the door.

Q. Well, he went out of the factory? A. Yes sir.

Q. And then went back? A. Yes sir.

Q. And you stayed there waiting for him? A. Yes sir.

Q. What did you say he said? A. He said "I didn't take out that money, didn't you see I didn't?" I says: "Yes sir, I seed you didn't". He said"That's all right, old boy, I don't want you to have anything to say to Mr. Herbert or Mr. Darley about what's going on around here".

Q. He told you he didn't wantyou to tell Darley? A. Yes sir.

Q. And then the next time, now, was Thanksgiving Day? Yes sir, the next time was Thanksgiving Day.

Q. What hour was it Thanksgiving Day? A. I don't know, sir,

what hour; I met Mr. Frank there that morning about eight o'clock.

Q. Anybody else there? A. I didn't see anybody else there.

Q. Where did you meet him then? A. I met Mr. Frank right at the door; I was sitting on the box when he come in.

Q. That's when he mentioned it to you again? A. That's when he taken me on the inside and told me---

Q. Tell me the words? A. After he went on the inside, he says: "How are you feeling"? I says: "I'm feeling all right, Mr. Frank".He says: "Come here" he says, "a lady will be here a little while, me and her goingto chat. I dont want you to do no work, I just want you to watch."

Q. About what time was that? A. Somewhere between eight and half past eight.

Q. Nobody there then.? A. I didn't see nobody.

Q. Where did you go then? A. He went upstairs.

Q. He went upstairs? A. Yes sir.

Q. Where did you go? A. I stayed down on the first floor.

Q. How long was it before the lady came? A. I don't know. sir. somewhere about half and hour.

Q. Something about nine o'clock that morning? A. I don't know sir, what time it was, it was about half a hour.

Q. Well, you said you got there about half past eight? A. I said somewhere between eight and half past eight.

Q. Well a half hour, then, would be somewhere between half past eight and nine, the lady came? A. Yes sir. It was a half hour.

Q. Did you know that lady? A. No sir, I didn't know that lady. I had never seen her around the factory.

Q. She had never worked there? A. No sir.

Q. And you never saw her before nor since? A. I think I saw her in the factory two or three nights before the Thanksgiving Day, in there in Mr. Frank's office.

Q. You didn't have any talk with her that night? A. No sir.

Q. Nor with Mr. Frank eight? A. No, sir, I had some talk with Mr. Frank about explaining about that clock.

Q. But about the lady? A. No sir, didn't say nothing at all about thatlady.

Q. Now, you had, you say, seen her there a few nights before?

A. Yes sir.

Q. Sitting in Mr. Frank(s office, was she? A. Yes sir.

Q. What time? A. Somewhere near eight o'clock.

Q. What did you have to do there? A. I had to stack some boxes up on the fourth floor.

Q. Eighth floor? You had to stack some boxes? A. No sir, I said fourth floor.

Q. That was about Thanksgiving Day? A. Yes sir.

Q. Was it the same week of Thanksgiving you saw her up there?

A. I don't known sir, whether it was the same week of Thanksgiving but somewhere near Thanksgiving; it wasn't many days.

Q. How was she dressed that night? A. I disremember how she was dressed that night.

Q. What sort of looking face did she have? A. She was a nice looking lady.

Q. What kind of hair did she have? A. I didn't pay no attention because I didn't go that close.

Q. What sort of complexion? A. I don't know , sir, I didn't get that close.

Q. You don't know what sort of clothes, nor what sort of shoes?

A. I think she had on black clothes.

Q. How tall was she? A. she was a very tall, heavy built lady.

Q. You are certain of that? A. Yes sir.

Q. Then, between half past eight and nine, she came to the factory? A. Yes sir, between half past eight and nine. o'clock.

Q. Where were you? A. I was standing down on the first floor.

Q. Standing down on the first floor? A. Yes sir.

Q. Was the door open when she came? A. The front door was open when she came.

Q. You closed it? A. I closed it after he stamped for me to close it.

Q. He stamped that time? A. Yes sir.

Q. He didn't do it before? A. No sir, because I would be down there and know.

Q. You heard her go into his room? A. Yes sir, I heard her go.

into his office.

Q. Where was he standing? A. Standing by the trash barrel, smoking a cigarette.

Q. She went upstairs and went into Mr. Frank's office, and you heard her? A. I Heard her going towards Mr. Frank's office.

Q. You heard her go in there? A. I couldn't hear them go in; I heard her going towards it.

Q. Didn't you say you heard those others go in? A. No sir, I said I heard them going towards the office.

Q. You didn't say you saw them go in? A. No sir, I said I heard them go towards it.

Q. And you didn't say you heard them go in? A. No, sir, I said I heard them go towards the office.

Q. You didn't say you saw them go in? A. No sir, I said I heard them go towards it.

Q. And you didn't say you heard them go in? A. No sir, I said I heard them go towards his office.

Q. But you didn't see the others? A. I don't remember saying I seen the others.

Q. Now she came and she went up and towards Mr. Frank's office, and he stamped? A. Mr Frank came out there and stamped.

Q. Where did he come to and stamp? A. Came to the trash barrel where he had told me---

Q. You mean upstairs? A. Yes sir, he was up on the second floor stamping.

Q. And you were on the first floor? A. Right about the trash barrel.

Q. And you were on the first floor? A. Right about the trash barrel.

Q. And he told you he was going to stamp? A. Yes sir, two times.

Q. And then he stamped? A. Yes sir.

Q. And then you closed the door? A. Yes sir, like he said so.

Q. How long did you stay there? A. I didn't stand in the door after I closed the door. I came back and sat down on the box.

Q. How long did you stay there? A. About a hour and a half.

Q. That would have been until about 10:30---about 10 o'clock

that you stayed there? A. I reckon so; I don't know how long exactly it was.

Q. Then the lady came down? A. No, sir Mr. Frank says: "I'll stamp after this lady comes, and you go and close the door and turn that night latch"

Q. That was the first time he ever told you about the night lock?

A. Yes sir.

Q. The other times, he told you just to close it?

A. Yes sir.

Q. But that time he told you to put the night lock on? A. Yes sir, and he says: "I'll stamp, and if everything is all right, you take and kick against the door"

Q. And that time you kicked against the door? A. Yes sir, I kicked on the door.

Q. You didn't kick against the door the other times?

A. No sir, because the ladies always went upstairs----

Q. Well, she went up then, too, didn't she? A. Yes sir.

Q. But he told you to stamp and everything would be all right?

A. No sir, he didn't tell me to stamp and everything would be all right, he didn't say that. He said he would stamp, and for me to kick the elevator door if everything was all right.

Q. And then you stayed an hour and a half that time?

A. Yes sir.

Q. Then the lady came down? A. No sir, Mr. Frank come down---

Q. He left the lady up there? A. No sir, Mr. Frank come down to the two doors and unlocked the doors and went on---come back and says: "Everything all right?" I says: "Yes sir", He went to the front door and fixed it hisself, unlocked the front door himself, he went and looked up the street like that (illustrating) and come to the steps and taken the knob and turned it, there at the head of the stair door, and told her to "come on "

Q. He turned the knob and told her to come on down?

Q. [illegible]

Q. Told her to come down? A. Yes sir.

Q. And she left? A. No sir, she come down; and after she got to me, she says to Mr. Frank, "Is that the nigger?"

and he says: "Yes"; and she says: "Well, does he talk much"; and he says: "No, he's the best nigger I've ever seen."

Q. She stopped there and looked at you? A. No sir.

Q. Didn't you say she stopped and asked Mr. Frank: "Is that the nigger?" A. She asked Mr. Frank that.

Q. She stopped and said to Mr. Frank: "Is that the nigger?"

A. No sir, she didn't stop.

Q. She just kept walking? A. Yes sir.

Q. Neither stopped, neither one of them stopped?

A. No sir, neither one of them stopped at all; she just said that

Q. Said: "Is that the nigger", and just kept walking on?

A. Yes sir, she kept on walking.

Q. And kept on walking off? A. Yes sir, she kept on walking, and—

Q. Just kept on walking, and Mr. Frank said: "Yes, that's the best nigger I ever saw"? A. Yes sir.

Q. You didn't see them stop at all? A. No sir, I didn't see them stop at all.

Q. Went out together? A. No sir, they never went out together.

Q. What did Mr. Frank do then? A. Mr. Frank went up and opened the door and come back up stairs.

Q. How long did he stay there? A. I don't know, sir, how long he stayed there.

Q. You left there? A. He told me to go back in the office——

Q. You went in the office? A. Yes sir; he called me. I went in the office, and Mr. Frank come and gave me a dollar and a quarter.

Q. Give you $1.25 that time? A. Yes sir, he gave me $1.25 that time.

Q. You went out then? A. No sir. I stayed there a little bit. He asked me where I was going that day. I says: "I aint going nowhere: I am going on home". He says: ". I'm going home directly too". I says: "Is that all, Mr. Frank". He says: "Yes", and I left away.

Q. Where did you go when you left? A. I went to the beer saloon over there on Hunter and Forsyth Street.

Q. How long did you stay there? A. I don't know, Sir; about an hour, I reckon.

Q. Then went home? A. No sir, I went to Peters Street and stayed a good while.

Q. Drank some more beer over there? A. No sir, I didn't drink no beer over there.

Q. Didn't drink but one beer that day? A. I don't know, sir, how many I drank at that saloon on Forsyth and Hunter.

Q. About what time did you leave the factory? A. I don't know, sir, it was a little before twelve o'clock, but I don't know what time.

Q. So the girl didn't come out of the factory that day until a little before twelve o'clock. A. I don't know, sir, what time she came out of the factory that day?

Q. you said you saw her leave? A. I said she stayed about an hour and a half.

Q. Well, what time did she leave? A. I don't know, sir, what time.

Q. What kind of dress did she have on? A. Blue skirt with white dots in it.

Q. She had on a blue skirt with white dots in it?

A. Yes sir, and white slippers and white stockings, and had a grey tailor-made coat--what I call a grey tailor-made coat-looked to me like with pieces of velvet on the edges of it.

Q. What kind of velvet was it? A. Black velvet.

Q. What color was the cloth that made the coat? A. It was grey.

Q. Did she have on any jewelery?A. I didn't notice her hands.

Q. What sort of a hat? A. Hat a black hat, with big, black feathers over.

Q. What else? A. That's all I paid any attention to.

Q. And she had white shoes and white stockings? A. Yes sir.

Q. Then Mr. Frank said he was going to dinner, and you didn't go back any more that day? A. No sir, I didn't go back any more that day: I left him there at the office.

Q. You left him at about twelve o'clock? A. Yes sir, a little before that.

Q. And wasn't anybody else there that day? A. No sir, not while I was at the office, I didn't see no body else there that day.

Q. The next time now? A. Next time was Saturday when I watched.

How long was that after Thanksgiving? A. That's somewhere after Christmas, way after Christmas, when I watched for him.

Q. That was in the dead of winter, then? A. Yes sir, in the dead of winter.

Q. About when? A. About January, I reckon.

Q. About the middle of January, or when? A. I don't know, middle first or last, I can't say--somewhere in January.

Q. How do you know it was somewhere in January? A. Because it was right after the first of the year.

Q. Well, if it was right after the first of the year you know what time it was in January? A. I said somewhere about the first or middle.

Q. Well, was it middle, or first, or last? A. I don't know, sir, somewhere one of them parts; it was right after New Year, I don't know whether one or two days after, or three or four days after.

Q. You couldn't tell any better than that? A. No sir, I couldn't tell any better than that.

Q. That was another Saturday? A. Yes sir, that was another Saturday.

Q. When did he first talk to you about that? A. Well, I disremember when he first talked to me about that.

Q. You don't remember what he said to you? A. No sir, I don't remember what he said to me.

Q. But you know you were down there watching; that's the only thing you can remember about that? A. I can remember one thing--He said----

Q. You said a minute ago you couldn't remember anything. A. I couldn't remember anything about him telling me about the watching, but I can remember about him telling me about who was coming.

Q. What did he tell you? A. Said it be a young man with two ladies.

Q. When did he tell you that? A. That was Saturday morning.

Q. What time? A. Soon Saturday morning.

Q. About what time? A. I reckon about half past Seven o'clock.

Q. Was Mr. Halloway there at that time? A. No sir, I had seen him but I was on the elevator.

Q. He came and got on the elevator with you? A. No sir, I was standing by the side of Gordon Bailey, and he came and told me.

Q. You can't remember what he told you except he was going to have a man and two ladies after awhile? A. Said: "A man and two ladies will be there this evening" and said I may can make some money off this man.

Q. Said what? A. That I could get to make a piece of money off this man.

Q. That was all he said to you about that? A. Yes sir.

Q. Didn't tell you when they would come? A. Said be there this evening about the same time.

Q. You didn't say that awhile ago when I asked you what he said did you? A. You cut me off so quick I didn't have time to say it.

Q. Well, I'm sorry I cut you off, I'll open it again and give you a better chance. That was about half past seven? A. Yes sir.

Q. What floor of the factory? A. I can't remember now just what floor it was on.

Q. You didn't see anybody at the time, except Mr. Holloway?

A. I saw Gordon Bailey; me and him was on the elevator together.

Q. He was talking to you so Gordon Bailey could hear him?

A. I don't know, sir, I reckon he could hear; he was talking so he could hear.

Q. He was talking so Snowball could hear it? A. Yes sir.

Q. Just talking to you about meeting a woman and let Gordon hear it? A. He said them words, yes sir.

Q. Right before Gordon? A. Yes sir.

Q. And you remember what floor it was on? A. No sir, I don't remember what floor it was on.

Q. He didn't say anything more to you after that?

A. No sir, he didn't say anything more to me after that.

Q. Then what did you do that evening? I went and go through cleaning up about quarter after two, and I went and stood at the door.

Q. He hadn't told you to stay at the door--just told you some woman was coming? A. Told me two ladies and a young man coming, and I could make myself some money off this man.

Q. All right, Then you went and stood at the door. A. Yes sir.

Q. Was the door open? A. One door was.

Q. Broad, open daylight? A. Yes sir.

Q. What time did the man and the ladies come? A. Somewhere about half past two or three o'clock.

Q. About half past two or three o'clock, they came? A. Yes sir.

Q. They come right in? A. No sir, they didn't come right in. The two ladies stayed back; the young man, he come in. He asked me was Mr. Frank in the office; he says: "Mr. Frank put you wise? I says: "Mr. Frank put me wise, how?" He says: "Didn't he tell you to watch the door, two ladies and a young man would be here?" I says: "He didn't tell me to watch the door" He says! "Two ladies and a young man be here" and, he says, "Well, I'm the one"

Q. Him and Mr. Frank used the same terms, then. Frank says: "I'll put you wise": and he said: "I'll put you wise"?

A. Mr. Frank didn't say it that day.

Q. Well, but he said it the other times? A. Yes sir. Q. And the two ladies stayed out there and talked to you? A. Yes sir, then he come and told them to come on.

Q. They went up to Mr. Frank's office. A. I don't know, sir, where they went after that, after they went upstairs, I don't know where they went after they got upstairs.

Q. You were near enough, wasn't you, to see? A. No sir, I was at the door.

Q. You don't know which way they went? A. I saw them when they turned that way, towards the clock.

Q. You say it was about half past two? A. Yes sir, it was about half past two or three o'clock.

Q. How long did they stay there that time? A. Stayed there, looked to me about two hours, I reckon.

Q. Then half past two and that would make it half past four o'clock? A. I don't know, sir, what time it would make it.

Q. Did you lock the door? A. No sir, I stood just inside the door.

sir, didn't nobody come in while I was there and didn't nobody come out.

Q. Did you know either one of those ladies? A. No sir, I didn't know either one of those ladies.

Q. Give me a description of those young ladies?
A. Well, I disremember what the ladies did have on.
Q. Can't you remember what either one of them had on?
A. No sir, I can't remember what either of them had on; I didn't pay much attention.
Q. Can't described either one of those women at all, can you?
A. No sir.
Q. What sort of looking man was he? A. He was tall, slim built, heavy man.
Q. Ever see him before? A. I have seen him there talking to Mr. Holloway.
Q. Did he work there? A, No sir, he didn't work there.
Q. When did you ever see him there talking to Mr. Holloway?
A. Seen him quite often talking to Mr. Holloway through the week.
Q/ Seen him quite often? A. Yes sir.
Q. Quite often? A. Yes sir, through the week, come there talking to Mr. Holloway.
Q. Give us a description of him? A. Well, I said he was a tall man.
Q. Well, did he had black hair? A. I couldn't see his hair; he had on a hat.
Q. Had light eyes? A. I don't know, sir, what you mean by that.
Q. Did he have grey eyes or blue or black? A. I didn't pay much attention to his eyes.
Q. You had seen him there frequently talking to Mr. Holloway, though? A. Yes sir.
Q. Where did he talk to Mr. Holloway at? A. Sitting out on the bench up there.
Q. Did you hear any conversation between him and Mr. Holloway?
A. No sir, I couldn't hear anything between them.
Q. Ever seen him since then? A. I seen him since he was talking to Mr. Holloway then.
Q. But you don't know who he was? A. No sir.
Q. Never saw the girl before or since? A. No sir, never saw [illegible] before.
A. Now Jim, you were talking to me when we left off about the time you say you watched for Mr. Frank? A. Yes sir,
Q. Did you watch for him again? A. In January, yes sir.

Q. Well, I am talking about January. Is that the last time you watched for him until this time? A. Yes sir, I think it was---if I am not mistaken.

Q. Well you aint mistaken about it, are you Jim? A. I don't know sir, I couldn't tell you about that.

Q. You have no recollection of any other time? A. No sir, no recollection of any other time.

Q. You have got no recollection, you can't remember it, if you did? A. Well, I don't know, Sir.-----

Q. Now let us take that time about the middle of July you say you watched for him the first time. What did you do the Saturday before you watched for him the first time? A. The Saturday before I watched for him the first time?

Q. Yes. A. I disremember now, went ahead with my work, I guess.

Q. You have no recollection of that at all? A. No sir.

Q. Now, let us take the Saturday before you say you watched for him, what did you do that Saturday? A. Well, I thought you said to take the Saturday before I had watched for him.

Q. Well, I did, and I will now take the Saturday after you watched for him the first time? A. Well, the Saturday I watched for him the first time/--I disremember.

Q. You can't remember what happened that day?

A. No sir.

Q. Nothing on that day? A. No sir.

Q. Well, the next Saturday? A. Well, I watched for him that Saturday.

Q. You say you didn't watch for him until three weeks?

A. That would make three weeks.

Q. One Saturday and two Saturday make three? A. That is what I call three, three times that I watched for him.

Q. One Saturday would be one week? A. Yes sir.

Q. The next Saturday would be two weeks? A. Yes sir.

Q. And the next Saturday would be three weeks? A. Yes sir, and the next Saturday would be three weeks.

Q. But I am not asking about that. I am talking about the second Saturday? A. You asked me what I did the second Saturday well, I don't remember.

Q. You mean you watched for him one Saturday and then the second Saturday you watched for him again? A. Then the second Saturday after that, I watched for him.

Q. You missed a Saturday? A. Yes sir.

Q. And then you watched the next Saturday? A. Yes sir.

Q. That is what you say about it now? A. Yes sir, that is what I say now and what I said before.

Q. Now the Saturday after you watched for him the second time, what did you do? A, I don't know sir, I disremember what I did.

Q. You don't remember anything about what you did at all now that day, do you? A. No sir, I don't remember.

Q. And the Saturday after that. Do you remember anything about that? A. Well, I don't know, sir, about the Saturday after that.

Q. Nor the Saturday after that? A. Yes sir, the Saturday after that, I think about the first of August, I did some more watching for him, somewhere along there.

Q. You did some more? A. Yes sir.

Q. Then you watched about the middle of July? A. About the middle of July.

Q. And about the first of August; three times?

A. Yes sir.

Q. Right there together? A. Yes sir, not one Saturday right after the other Saturday, though.

Q. One Saturday after that you didn't watch? A. Yes, sir.

Q. And the next Saturday you didn't watch? A. My best memory, the next Saturday, then I watched again, yes sir.

Q. That is the way you remember it now? A. Yes sir. That is the way I had it before.

Q. But that is the way you now remember it? A. Yes sir.

Q. Not let me see if I have got that right. You watched one Saturday in July, the next Saturday you watched? A. Yes sir.

Q. And the next Saturday you [illegible]

Q. And the next Saturday you didn't watch, and the next Saturday you did? A. Yes sir.

Q. That is the way you remember it now? A. Yes sir.

Q. You are certain that is the way it happened; that is your

best recollection? A. Yes sir.

Q. Of course, you don't know except from you best recollection. Then you didn't watch for him until Thanksgiving Day?

A. Until Thanksgiving Day.

Q. What did you do the Saturday before Thanksgiving Day? A. I don't remember what I did.

Q. What did you do the Saturday after Thanksgiving Day?

A. I don't know what I did.

Q. And the next Saturday? A. Well, the next Saturday, I could tell you what I did that Saturday.

Q. And the next Saturday? A. Well, I don't know, sir, what I did the next Saturday.

Q. And the next? A. The next Saturday I did some watching for him, then.

Q. Let me see if I get that now? You watched Thanksgiving Day? A. Yes sir.

Q. The next Saturday you didn't watch, and the next Saturday you did? A. I watched somewhere along about the last of Sept.

Q. That is your recollection? Yes sir, somewhere about the last of September, somewhere like that.

Q. That is your recollection? A. Yes sir, about the last of September, somewhere like that.

Q. Well now, that is you best recollection? A. I say somewhere about the last of September.

Q. Well, I gave it right, didn't I? A. I don't know, sir, I can't count by the week.

Q. Well did you say that? A. No sir.

Q. What did you say? A. I said something like that.

Q. Well, that means you are doing the best you can to give me the best memory you have? A. All right sir.

Q. Isn't that correct, Jim? You and I don't want to misunderstand each other now? A. No sir, we wont misunderstand each other.

Q. Well, is that correct? A. I say sometime about the last of September I did the last watching.

Q. That was after tThanksgiving? A. Yes, after Thanksgiving.

Q. In September after Thanksgiving is your recollection?

A. Yes sir, after Thanksgiving Day.

Q. About the last of September? A. After Thanksgiving Day; yes sir.

Q. About the last of September? A. After Thanksgiving Day, yes sir.

Q. Now Jim, you don't remember any of these dates?

A. No sir, I don't remember any of these dates. I can't tell about them.

Q. Let us see how much money you drew that Saturday that you watched for him; how much money did you draw that day?

A. I don't know, sir.

Q. What time did you draw it? A. I don't know, sir, what time I drew it.

Q. Did you draw it at all, or did somebody draw it for you?

A. Well, I don't know, sir, whether somebody drew it for me or I drew it.

Q. You don't remember about that? A. No sir.

Q. You have no memory at all about that? A. No sir.

Q. What time did you get home the first morning you watched for him? A. I couldn't tell you to save my life.

Q. Nor what time you went home, you couldn't tell me?

A. No sir, I couldn't tell you.

Q. You couldn't tell me anything at all about that?

A. No sir.

Q. The second time you watched for him. Can you remember the time you got back to the factory? A. No sir, I couldn't tell you what time I got to the factory.

Q. Or what time you left to go home? A. Well, I don't know, sir, what time I left to go home.

Q. You can't remember? A. No sir, I don't know what time I left to go home.

Q. Now the second Saturday did you draw your money- the second time you watched for him, did you [illegible]

or not? A. I disremember now.

Q. Did you draw it; or did somebody draw it for you?

A. I disremember.

Q. How much did you draw? A. I don't know, sir.

Q. Now, that third time, on the day before Thanksgiving; that is, three times before Thanksgiving, according to your recollection? A. Yes sir.

Q. Now did you draw your money that week? A. Before Thanksgiving I couldn't tell you about that.

Q. You don't know whether you drew your pay or whether somebody drew it for you? A. No sir.

Q. Or how much you drew? A. No sir.

Q. You don't remember that, do you? A. No sir.

Q. When did you draw your pay, before or after Thanksgiving, that week of Thanksgiving? A. The week of Thanksgiving when did I draw my pay?

Q. Before or after Thanksgiving Day? A. Well, to tell you the truth I disremember.

Q. You don't remember? A. No sir.

Q. You can't remember whether you drew your pay before or after Thanksgiving? A. No sir.

Q. Can you remember what day of the week Thanksgiving was? A. No sir, I don't remember.

Q. And you don't remember what time you got down in the morning or what time you left? A. No sir.

Q. You have no memory at all about that, have you? A. No sir.

Q. The day after Thanksgiving. Do you remember what you had been doing that day? A. No sir, but to my remembrance I think I came back to work the day after Thanksgiving.

Q. Are you certain about that, or have you any memory at all about it? A. I think I came back to work.

Q. What time did you get there? A. I don't know, sir, what time I got there.

Q. What time did you leave that day? A. I don't know, sir.

Q. You can't remember anything about that? A. No sir.

Q. The day before Thanksgiving, what time did you go down to the factory that day? A. I don't know, sir, what time I got to the factory that day.

Q. How many hours did you make that day? A. I don't know, sir.

Q. When did you leave that day? A. I don't know, sir

Q. Who did you see at the factory that day, that you remember?

A. Well, I saw, I reckon, most everybody there.

Q. Well, who do you remember seeing there? A. I remember seeing Mr. Frank.

Q. You do remember seeing Mr. Frank? A. Yes sir.

Q. The day before Thanksgiving? A. Yes sir.

Q. Did you see him the day after Thanksgiving?

A. Yes, sir, I saw him the day after Thanksgiving.

Q. You remember those two facts well? A. Yes sir, I remember those two.

Q. You saw Mr. Frank the day before Thanksgiving when you got there. A. Yes sir.

Q. And you saw him the day after Thanksigiving? A. Yes sir.

Q. Who else did you see? A. Well, I don't remember, now, who else I did see.

Q. You don't remember who else you saw? A. No sir.

Q. Did you see Mr. Darley? A. I don't think I saw Mr. Darley.

Q. Who is the foreman in the place where you work?

A. Well, they have got foreladies there.

Q. Who is the forelady? A. One was Miss and Miss Clark and Miss Willis.

Q. In the place where you work, where is that? A. On the fourth floor.

Q. Did you see either one of them there that day? A. I don't remember.

Q. Let us take the first Saturday you said you watched for him. How many hours did you make that day? A. I don't know, sir, how many hours.

Q. You can't remember anything about that? A. No sir.

Q. Or the second day, do you know how many hours?

A. No sir.

Nor the third? A. No sir.

Q. Or Thanksgiving? A. No sir.

Q. Do you know how much you were paid for either one of those days? A. Yes sir. I can tell you what I was paid Thanksgiving Day when I watched for him. 48.

Q. Well, you know that was $1.50? A. No sir, I said it was $1.25.
Q. Well, outside of the factory, do you remember what you got for your services? A. Outside of the factory, I remember once I got a half a dollar, then, again, I remember getting half a dollar.
Q. That is when you were watching for him, you say?
A. Yes sir.
Q. And you got how much on Thanksgiving Day? A. I got $1.25.
Q. The day before that? The day just before that, I don't remember just how much I got from him that day.
Q. The Saturday before that? A. You mean for watching?
Q. Yes. Q. Well, the Saturday before that, I don't know, sir, what I got that Saturday. I don't think I done any watching that Saturday.
Q. Well, you watched three Saturdays before Thanksgiving?
A. Yes sir.
Q. And then you watched again about the last of September?
A. Yes sir.
Q. How much did you get the first time? A. The first---
Q. But let us take them up the other way. How much did you get the first Saturday before Thanksgiving? How much did he pay you then. A. I remember getting 75 cents then; 50 cents from him and a quarter from the other man.
Q. Well, the next time? A. The next time I remember getting 50 ¢
Q. The next time? A. I remember getting 50 cents then.
Q. But you don't know how much you got for your regular work for any of those days? A. No sir.
Q. You can't remember anything about that? A. No Sir-----
Q. The first day you said you watched for Mr. Frank, was Snowball there that day? A. No sir, Snowball was not there.
Q. You didn't see him. A. No sir, I didn't see him. I think he laid off.
Q. How about the next day? A. I don't remember about the next day.
or not. I don't remember about where he was.
Q. Well, the third one, was Snowball there that day?
A. I disremember about the third Saturday.

Q. Well the next one was Thanksgiving. Did you see him

Thanksgiving morning? A. I didn't see him Thanksgiving morning, but I saw him the day before Thanksgiving.

Q. That is the time when you heard Mr. Frank talking in the presence of Snowball? A. Yes sir.

Q. He didn't hesitate to talk for Snowball? A. No sir.

Q. He talked before Snowball just like he did before you? A. Yes sir.

Q. The first time he did that was Thanksgiving Day, that he talked before Snowball? A. Not Thanksgiving Day, no sir.

Q. The day before Thanksgiving? A. Yes sir, the day before.

Q. When was that when you and him and Snowball were talking together? A. I don't know what time it was.

Q. You don't know what time that was? A, No sir, I

Q. You don't know what time that was? A. No sir, I don't know what time it was.

Q. Was it in the morning? A. Yes, sir, somewhere along in the morning.

Q. Or in the afternoon? A. It was somewhere in the morning.

Q. About what time in the morning? A. I don't know, sir, what time it was, I reckon somewhere before 12 o'clock.

Q. Was Snowball the elevator man? A. Yes, he was running the elevator that day.

Q. The date you don't remember; but it was sometime in Sept., before Thanksgiving Day? A. Yes sir.

Q. The day before Thanksgiving? A. Yes sir.

Q. And Snowball was the elevator man at that time? A. No sir.

Q. How came him to be running the elevator? A. Because he wanted me to swap places with him, and I wouldn't do it; and he went to work and swept some trash in the box, and I had to sweep it out.

Q. You were the elevator man? A. Yes sir.

Q. But he was running it? A. Yes sir, he was running it then.

of you? A. No sir, he didn't say a word.

Q. It didn't attract his attention at all? A. No sir, didn't atract his attention at all.

Q. How long had Snowball worked at the factory? A. I don't know sir------

Q. Now, that time when you watched in January, was Snowball there that day---I believe you said in was in January?

A. Yes sir, I said I watched one time in January.

Q. Well, was Snowball there? A. I don't know whether he was or not.

Q. Now, the only time you ever heard Mr. Frank say anything in front of Snowball was that time you have just mentioned? Thanksgiving is that what you said? A. Yes sir.

Q. You heard him say something before Snowball then?

A. One time was in January.

Q Where was that, in January? A. He said that in the box room. In the box room, he told me.

Q. Snowball was in there? A. Yes sir, he was helping me to stand the boxes.

Q. Snowball was in there? A. Yes sir, he was helping me to stand the boxes.

Q. He walked up there and told you before Snowball?

A. I don't know whether he knew Snowball was there or not.

Q. Was he close to Mr. Frank? A. No sir, Snowball was sitting up in the rack.

Q. Was he in sight, or not? A. Yes sir, he was in front of the little partition, between me and Mr. Frank.

Q. You could see him, could you? A. No sir, I couldn't see him from where he was standing, but I knowed he was there.

Q. Mr. Frank wouldn't hide it from Snowball; he would talk before Snowball all right? A. I don't guess he would if he had seen him.

Q. Tell a single one he has ever talked to you about, except business, before that first time you watched for him.

Give us the day and time he ever talked to you, and what he talked about? He wouldn't give you the day, or time of day at all.

Q. Give the day when he ever jollied with you, prior to the time he talked to you the day before he talked to you the daybefore

you watched for him? A. I couldn't give you the date. I couldn't tell you the date about it at all------

Q. How long was that before the day you watched for him?

A. I don't know, just directly after Mr. Darley had come there.

Q. That was after he had that talk with you that you are talking about? A. After he had what talk with me?

Q. The one that he had with you in the elevator?

A. Yes sir, that was after that time.

Q. The first time you ever saw him have any talk at all with Snowball, except on business, was that day he talked about that girl right before you and Snowball? A. Yes sir, that was the first day.

Q. That is the first time? A. Yes sir, the first time I saw him talk in front of Snowball.

Q. He just come in that and commenced talking to you, and paid no attention to Snowball? A. He didn't know Snowball was in there.

Q. In the elevator. How could he help seeing him if he was in the elevator? A. The elevator was gone down. Whenever I would get ready to work at night, he would send the elevator to the basement, and we would go in the back room.

Q. You were not on the elevator when you had that talk?

A. No sir, that talk was in the back room.

Q. I am talking about just before Thanksgiving. You were in the elevator that day? A. Yes sir, we were in the elevator then. I was standing right there beside the elevator.

Q. Well, Snowball was standing right here by you? A. Snowball was standing right there by me, yes sir.

Q. He could have seen him, Mr. Frank, couldn't he?

A. Yes sir, he was where he could have seen him, and he was where he could have heard anything that was said.

Q. And Mr. Frank knew that he could have heard anything that was said? A. Yes sir, he knew he could have heard anything that was said.

Q. He saw Snowball standing there? A. Yes sir, he saw Snowball standing there----

Q. Well, take last Thanksgiving Day. How many was there?

A. This gone Thanksgiving?

Q. Yes, A. I don't know; there was a big crowd.

Q. When did Miss Daisy Hopkins work there? A. Oh, she worked in 1912.

Q. 1912? A. Yes sir.

Q. You are certain of that? A. Yes sir, I am certain she worked there in 1912.

Q. What floor did she work on. A. She worked on the fourth floor

Q. The fourth Floor? A. Yes sir.

Q. And she worked there in 1912? A. Yes sir.

Q. What time in 1912 did she quit there? A. I don't know what time.

Q. About when, Jim? A. I don't know when she quit there.

Q. What time of the year did you see her working there?

A. I saw her working there in 1912.

Q. What part of the year? A. Well, I saw her working there from June on up.

Q. June on up? A. Yes sir, up until about near Christmas.

Q. All right, you saw her working there from June or July of 1912 until Christmas? A. Yes sir.

Q, Or about that time? A. Yes sir.

Q. And she worked on the fourth floor? A. Yes sir, she worked on the fourth floor.

Q. Has she worked there in 1913? A. I don't know: I don't remember seeing her there; I don't know whether she has worked there in 1913 or not.

Q. You can't remember that? A. No sir, I can't remember that

Q. You worked on the same floor with her, didn't you?

A. I didn't work with her at all. I worked on the same floor.

Q. And you don't know whether she worked there in 1913 or not?

A. No sir, I don't remember.

Q. But you know she worked there from June until about Christmas?

A. Yes sir, I know she worked there from about June until about Christmas.

Q. You are very certain of that? A. Yes sir.

Q. Do you know when Miss Daisy left Miss Daisy Hopkins?

A. No sir.

Q. You don't remember when she left? A. No sir, I don't remember that.

Q. Was she married or a single lady? A. I don't know.

Q. Now, describe Miss Daisy to us? A. Well, Miss Daisy, she was low lady, kind of heavy, and she was pretty, low, chunky, kind of heavy weight, and she was pretty.

Q. Can't you give a better description of her than that?

A. No sir, that is the best I can give of her.

Q. What sort of color hair did she have? A. Well, I don't remember what color hair she had.

Q. What color eyes? A. I didn't pay no attention to her eyes.

Q. What sort of complexion? A. What do you mean by complexion?

Q. Well, don't you know what complexion means? A. No sir, not complexion.

Q. You don't? A. No sir.

Q. You are dark complexion and I am white? A. Yes sir.

Q. Well, with that definition? A. She was white complexion.

Q. Well, I know but was she fair or brunette, or was she blonde, or what was she? A. I don't know nothing about no brunette.

Q. Was she dark skinned, or fair skinned, for a woman. I know, of course, she was a white woman; but there are some dark skins and some light skins, aren't there? A. Yes sir, there is some dark skins and some light skins.

Q. Which was she? A. She was light skinned.

Q. She was light skinned? A. Yes sir.

Q. But you don't remember what sort of hair, what sort of nose did she have? A. I didn't pay any attention to her nose.

Q. What sort of ears did she have? A. She had ears like people.

Q. Like folks? A. Yes sir.

Q. I didn't expect her to have them like a rabbit; and she didn't have, did she? A. No sir, she didn't have ears like a rabbit.

Q. Well, did she have large or small ears? Do you remember that?

A. No sir, I didn't pay any attention to her ears, whether

Q. You can't give any description of her at all now, can you, Jim? A. I can't give a description of her, except she was a white lady.

Q. You say she was a white lady? A. Yes sir, and she was low and chunky.

Q. How old was she? A. I don't know how old she was.

Q. How old did she look to be? A. She looked to be like about 23 years old.

Q. About 23 years old? A. Yes sir.

Q. Was she working there when you went there or not?

A. I don't know.

Q. You don't know? A. No sir.

Q. The only time you can remember was that she worked from June, 1912, until Christmas, 1912? A. Yes sir, ~~or near about Christmas.~~ that is it.

Q. You can remember that? A. Yes sir, or near about Christmas.

Q. Now, the very first time you ever saw Miss Daisy Hopkins was sometime in June 1912? A. Yes sir.

Q. The first day you ever knew she was there was the day that note was sent down? A. Yes sir.

Q. The first day you ever knew she was there was the day that note was sent down? A. Yes sir.

Q. You don't remember ever to have seen her there before that?

A. Yes sir, I remember seeing her there after that time.

Q. I said before? A. No sir, I don't remember seeing her there before that time.

Q. That is the way you fix it now, how do you fix the time she left there? A. How do I fix the time she left there during Christmas?

Q. That is what I want to know? A. Because Mr. Dalton told me she wasn't coming back.

Q. Mr. Dalton told you? A. Yes sir.

Q. Did Mr. Dalton work there? A. No sir, he didn't work there.

Q. Where does Mr. Dalton work? A. I don't know where Mr. Dalton works at.

Q. When Mr. Dalton told you Christmas that she was going away, [illegible] there.

Q. I know, but where was he when he told you that? A. He was coming out of the factory.

Q. When was that? A. It was Saturday: I don't know the date.

Q. You don't remember the date? A. No sir.

Q. You don't remember the date now? A. No sir.

Q. You don't remember his name? A. I know his name was Dalton.

Q. What else besides Dalton? A. No sir, I don't know his first name.

Q. You don't know where he lived? A. No sir.

Q. Or where he works? A. No sir.

Q. Describe Mr. Dalton to me? A. Do what?

Q. Tell me what kind of a looking man Mr. Dalton was?

A. He was a slim looking man, and tall with it.

Q. A slim looking man, and tall with it? A. Yes sir.

Q. And what else? A. That is all I can tell you about him.

Q. You can't give any other or better description? A. No sir; his eye lashes seemed to be a little thick.

Q. Eye lashes thick? A. Yes sir.

Q. What was the color of his eye lashes? A. I disremember now what color his eye lashes was.

Q. What was the color of his hair? A. His hair was black, I think; I am not sure.

Q. Are you certain? A. No sir, I am not.

Q. You are not certain about that? A. No sir.

Q. What sort of complexion did he have? A. What kind of complexion?

Q. Was he light complexion, or dark complexion? Was he darker or lighter complexion than I am? A. He was just about your complexion.

Q. About my complexion? A. Yes sir.

Q. Well, would you call me a light complected man or a dark com plected man? A. I could call you a light complected man.

Q. Light? A. Yes sir.

Q. How much did Mr. Dalton weight-about how much? A. I don't know, about 135 pounds.

Q. About how tall was he-would you say he was? A. Well, he was tall I guess he was about as tall as that young man sitting there.

Q. About as tall as this man (indicating Mr. Arnold)?

A. Yes sir.

Q. Weighing about as much? A. I don't know whether he would weigh as much as that man or not.

Q. Does he look he would weight about that much? A. Yes sir, he looks like he would weight about that much.

Q. Then he was about the size of Mr. Arnold, Mr. Dalton was? A. Yes sir just about that size.

Q. How old a man did Mr. Dalton look to be? A. He looked to be a man somewhere about 35 years old.

Q. About 35 years old? A. Yes sir.

Q. You don't know where he lived? A. No sir.

Q. You don't know anything about that? A. No sir. I don't know where he lived at.

Q. How many times did you ever see him? A. I don't know about that.

Q. Did you see him around the factory? A. I saw him around there, coming around the factory after a girl.

Q. Did you ever see him any other place except around the factory? A. No sir, I never saw him anywhere except around the factory.

Q. How many times did you see him around the factory?

A. Several times I saw him there.

Q. About how many? A. I don't know.

Q. You saw him one time coming out with a girl; what was he doing the other times you saw him? A, The first time I saw him he was going out with a lady that he brought in there.

Q. That is the time you have done told about? A. Yes sir.

~~Q. What date was that, about when? A. That was on Saturday.~~

Q. Well, about what month? A. Somewheres along in June.

Q. Somewheres along in June or July? A. July.

Q. Sometime in July? A. Yes sir.

Q. That is the first time you ever saw him? A. some time about the last of July.

Q. Where did you see him then? A. Around at the factory.

Q. What was he doing then? A. He come there with a lady.

Q. That same one? A. Yes sir.

Q. That same lady? A. Yes sir.

Q. When did you see him again? A. I saw him again about two weeks after that.

Q. What was he doing then? A. I just met him in the door then.

Q. Met him in the door? A. Yes sir.

Q. What date was that, about when? A. I don't know; it was on a Saturday; I disremember the time.

Q. That is the time you have already talked about. You have done told about that? A. Yes sir, I have done told about it.

Q. This morning? A. Yes sir.

Q. What month was that? A. I don't know, somewhere about the last of August, I reckon.

Q. About the last of August, you reckon? A. Yes sir,

Q. When did you see him again? A. I didn't see him no more, I don't reckon, until along up to that Thanksgiving time.

Q. Where did you see him then? A. I saw him there, coming in there with a lady.

Q. That is the same Thanksgiving Day you have already told about? A. Yes sir.

Q. He came in there Thanksgiving? A. No sir, I didn't say Thanksgiving; it was before Thanksgiving. I said before Thanksgiving.

Q. When did you see him again? A. No more then until after Christmas.

Q. Then, where did you see him? A. I saw him there to the factory with a lady.

Q. Did you ever see him anywhere else, except those times coming out of the factory? A. No sir, that is all.

Q. You saw him about Christmas? A. Yes sir, I saw him coming into the factory.

Q. You said until after Christmas? A. I said this last time, I didn't see him no more until after Christmas.

Q. It was Chirstmas? A. I didn't see him on Christmas day.

Q. About what time did you see him? A. Sometime along in January.

Q. Somewhereal ong in January? A. Yes sir.

Q. Who did he come out with? A. He came out that time by himself.

Q. By himself, where had he been? A. Him and the lady was down in the basement.

Q. Down in the basement? A. Yes sir.

Q. Do you know who she was? A. I don't know her name, but I know her face, and I know where she lives.

Q. How long since you have seen Mr. Dalton? A. Well, I haven't

seen Mr. Dalton now in about a month or more.

Q. Where did you see him the last time? A. The detectives brought him down there to the station house, and said had I ever seen him about in there.

Q. And you told them what you knew? A. Yes sir, I told them about what I knew.

Q. And you haven't seen Mr. Dalton since then? A. No sir.

Q. Now Jim, how was Mr. Dalton dressed the first time you ever saw him? A. Well, I disremember now how he was dressed.

Q. Can't you give us any help about that at all? A. All I can remember him having on, I think, was a brownish looking suit of clothes.

Q. What sort of hat did he have on? A. I didn't pay no attention to his hat.

Q. What sort of shoes did he have on? A. I didn't pay no attention to the shoes.

Q. When was the next time you happened to see him? A. The next time I saw him.

Q. What sort of clothes did he haveon then? A. I disremember. I didn't pay no attention to his clothes.

Q. The next time, what did he have on? A. I don't know what he had on the next time: I didn't pay no attention to that.

Q. And the next time? A. I didn't pay no attention to his clothes that time.

Q. The last time you saw him, what did he have on?

A. I didn't pay no attention to his clothes the last time.

Q. You can't tell me anything about what sort of clothes he ever wore, except the one time that he had on a brown suit? A. Yes sir; he looked like a man that had just got off from work and put on clothes enough so as to go through the streets.

Q. He had on a brownish suit? A. Yes sir.

Q. Did he have any mustache the first time you ever saw him?

A. I didn't have any mustache.

Q. Did you ever see him with any mustache? A. Not to my knowing.

Q. You know you saw him? A. Yes sir, I know that I saw him, but I didn't pay no attention to his mustache.

Q. Did he have any whiskers? A. No sir, he didn't have any whiskers.

Q. And you don't remember whether he ever had any mustache? A. No sir, I can't remember whether he had a mustache or not.

Q. You wouldn't want to say about that? A. No sir, I wouldn't want to say about that, because I don't remember about that.

Q. Now, take the first day you said you waited there for Mr. Frank. Did you see anybody, Mr. Darley, that day about the factory, or Mr. Holloway? A. The first Saturday?

Q. Yes, A. Yes, sir, I saw Mr. Holloway there on the first Saturday.

Q. What time did he leave there? A. Well, I don't know. He left away from there somewhere about two or half past two, I reckon.

Q. Well, don't reckon, please, tell what you remember?

A. He left away from there about two or half past two, all right: I couldn't say just what time it was.

Q. You don't know what time it was? A. He generally stayed----

Q. Not what he generally did, but, on that particular day,--- that day, what time did he leave, the first time you said you waited for Mr. Frank? A. He left away from there somewhere about two or half past two.

Q. Do you remember it? A. Yes sir, I can remember it.

Q. Did you see Mr. Darley that day? A. I saw him that morning.

Q. Well, now, what time did he leave? A. I don't know what time he left.

Q. Well, now, why can't you tell when he left the factory, if you know when Mr. Holloway left? A. Because I always met Mr . Holloway when he was leaving, because he was always leaving, too.

Q. Always leaving? A. Yes sir.

Q. You don't know how late he stayed there that day, do you, nor whether he came back or not? A. No sir, I don't know whether he came back or not.

Q. The next time you watched, did you see Mr. Holloway that day? A. The next Saturday I watched, I don't think Mr. Holloway was there, the next Saturday, he was sick.

Q. You don't think you saw him? A. No sir, I don't think I saw him.

Q. He was sick? A. He was sick that Saturday.

Q. He was sick on that Saturday? A. Two Saturdays in June.

Q. He was sick one Saturday when you watched? A. Yes sir.

Q. About what date was it; about what date was it, when you watched, when he was sick? A. It was somewhere about three o'clock I reckon.

Q. What month was it that old man Holloway was sick when you watched? A. I don't know whether he was sick or not: they told me he was sick.

Q. You said he was sick? A. They told me he was sick.

Q. They reported to you that he was sick? A. Yes sir.

Q. What date was that? A. It was about the last of July, the first or last-- or something like that.

Q. What date was it? A. It was the last of July or first of August, or something like that.

Q. You said he was sick again. When was he sick again?

A. He was sick again up in this year.

Q. This year? A. Yes sir.

Q. I am not talking about that. Did you see Mr. Darley that time when Mr. Holloway was sick? A. When Mr. Holloway was sick, I disremember now whether I seen Mr. Darley that day or not

Q. Did you see Mr. Schiff that day? A. I disremember whether I saw Mr. Schiff or not.

Q. You disremember that. A. Yes sir.

Q. Did you see anybody that day? A. Yes sir, I seen somebody that day.

Q. Who? A. I saw Mr. Frank that day for one person.

Q. I know; but outside of Mr. Frank who else of the office force did you see that day--anybody or not. A. The office force, well, I disremember now.

Q. Well, now the next time you watched there, that was Thanksgiving wasn't it? A. No sir, that was before Thanksgiving.

Q. Before Thanksgiving? A. Yes sir.

Q. About what time? A. Well, it was somewhere about the last of August.

Q.Last of August? A. Yes sir.

Q. Well, now, did you see anybody there that day? Was Mr. Holloway sick that day, too? He was sick that day, too, wasn't he? A. No sir, he wasn't sick that day.

Q. Did you see him. A. Yes sir, I saw him that day.

Q. What time did he leave that day? A. I don't know; he left about two o'clock I reckon.

Q. Don't reckon, please, Jim, tell us if you have any memory about it, say so, and if you haven't, say you havent. please? A. He left away from there about two o'clock.

Q. Then awhile ago you said about half past two, and- now you state two? Q. No sir, I said he left away from there about half past two the first time.

Q. And this time, what time did you say he left? A. I said he lef away from there about two.

Q. About two o'clock? A. Yes sir, that time.

Q. Did you see Mr. Darley that day? A. I disremember whether I did or not.

Q. You disremember that? A. Yes sir.

Q. The next time was Thanksgiving day-- that you watched for him? A. The next time I watched for him----

Q. Was Thanksgiving Day? A. Was the last day the last o f Sept., behind Thanskgiving Day.

Q. That was behind Thanksgiving Day? A. Yes sir.

Q. Before or after Thanksgiving, Jim? A. This here was before Thanksgiving.

Q. Haven't you said half a dozen times that you watched in September, and that was after Thanksgiving? Haven't you told that a dozen times to the jury? A. I said it was after Thanksgiv - ing. Q. Yes? A. Well, September is after Thanksgiving.

Q. Your understanding is that it was after Thanksgiving?

A. Yes sir, it was after Thanksgiving.

Q. So that it was in September after Thanksgiving?

A. Yes sir.

Q. That is correct, now Jim? A. Yes sir, after Thanksgiving

Q. Yes that is right, Well now, that day Mr. Darley was there that day? A. Yes, sir I remember seeing him there that day.
Q. Was Mr. S chiff there? A. Yes sir. Mr. Schiff was there that day.
Q. What time did Mr. Darley leave? A. I don't know what time he left.
Q. What time did Mr. Schiff leave? A. I don't know what time he left.
Q. What time did Mr. Holloway leave? A. Mr. Holloway left away from there about half past two.
Q. Do you remember that? A. Yes, sir, I can remember that.
Q. How can you remember when Mr. Holloway left and, yet, don't remember when anybody else left? A. I can always remember when he leaves, because you always have to tell him when you have to leave out and how long you are going to stay.
Q. You tell him when you are going to leave, and how long you are going to stay? A. I didn't tell him that time, because I was going to work that evening.
Q. The next time, did you tell him you were going to ring out? A. No sir, I didn't tell him that I was going to ring out.
Q. The next time, did you tell him? A. No sir, I just told him I was going to work.
Q. If you never told him that you were going to ring out, how do you remember when he left? A. Because , I will tell you, if I didn't have any other work to do, I would go down to the first floor and sit on a box and go to smoking, and he worked down there.
Q. And you didn't tell him when you were going to ring out? A. No sir, I didn't tell him when I was going to ring out.
Q. Therefore, your ringing out had nothing to do with when he left, because you never told him? A. No sir, I never told him that.
Q. You never told him anything about it? A. Well, now, in September, after Thanksgiving was Mr. Darley there that day?
A. Yes sir. I remember seeing Mr. Darley that day.
Q. Was Mr. Schiff there that day? A. Yes sir, I remember seeing him there.
Q. What time did Mr. Holloway leave? A. Mr. Holloway left away from there about two o'clock.

Q. The next time you watched was right after Christmas?
A. No sir, the next time I watched was Thanksgiving Day, then-
Q. You said awhile ago September was after Thanksgiving?
A. Yes sir, after Thanksgiving day.
Q. All right. Well, now Thanksgiving Day, the day you have told about in January, who did you see there in January, I mean who of the force? A. I disremember now who I did see in January when I was there that morning.
Q. You disremember? A. Yes sir, I disremember.
Q. Can you remember anybody you saw there? A. Nobody I saw there at all. Mr. Holloway, I can remember.
Q. Jim, isn't it true, that on every Saturday morning a number of people come there to that factory always? A. Well, I don't know. I couldn't tell; nobody but just them that worked there.
Q. The first you watched, tell us anybody that came there that day? A. I couldn't remember that, I couldn't tell you.
Q. You don't know about that? A. No sir.
Q. The second time, you don't know whether anybody was working there or not? A. To my memory, I think there were some young ladies working up on the fourth floor.
Q. Some ladies working there that evening up on the fourth floor? A. Yes sir.
Q. That is your memory about the second time? A. Yes sir.
Q. Then, the third time, was anybody working there that evening, Saturday evening? A. I don't know about the third time.
Q. You don't remember whether there were some young ladies working up there that evening? A. No sir, I don't know about the third time.
Q. You can't remember about that? A. No sir.
Q. Well now Thanksgiving do you know whether anybody was working there Thanksgiving evening? A. No sir, I don't know whether any body was working there Thanksgiving evening or not.
Q. You don't know whether Mr. Schiff worked there that evening? A. No sir, I don't know whether Mr. Schiff worked that evening or not.
Q. You can't remember that, can you? A. I didn't see Mr. Schiff at all.

Q. You can't remember whether he was there or not?
A. No sir.
Q. You wouldn't swear that he was not there? A. I will swear I didn't see him; I will swear he wasn't in the office with Mr. Frank.
Q. You swear to that? A. Yes sir.
Q. Will you swear he wasn't there that day? A. I will swear Mr. Irby was working in the office.
Q. Thanksgiving Day? A. No sir, he wasn't working in the office on Thanksgiving.
Q. The next time, was there any ladies working on the fourth floor? A. I don't remember.
Q. You don't remember whether there were or not?
A. No sir.
Q. You can't remember that? A. No sir.
Q. They might have been?.A. I didn't see none of them there.
Q. You didn't see them? A. No sir.
Q. You only saw them working there one day? A. I saw them working there the second evening.
Q. On the fourth floor----
Q. Did you say anything else about it? Do you think that you told about watching for Frank at that time. You think you told that at that time? A. I don't know whether I told them at that very time.
Q. Didn't you say that you did? A. No sir.
Q. That's your opinion that you did? A. I aint got no opinion about it.
Q. Well, that's your best recollection that you did?
A. No sir, its not my best recollection.
Q. Well, what is your best recollection, that you didn't then?
A. What do you mean by that.
Q. Did you or did you not? A. I don't know , sir, I'm telling you the truth------
Q. Well, he had already had that signal about stamping and whistling a long time. What did he give it to you over again for?
A. He told me that Thanksgiving, but didn't do it until I set then on the box.

Q. Didn't you say he always gave you that signal? A. Nos sir, I didn't say he always gave me that signal.

Q. Gave it to you Thanksgiving? A. Yes sir.

Q. And repeated it to you that day again? A. Yes sir.

The witness Conley was examined by the solicitor, who brought out the direct questions and answers Supra, and was then cross-questioned by the defendant, when counsel brought out the cross-questions and answers Supra.

Thereafter, and while the witness Conley was still on the stand. Defendant's counsel moved to rule out, exclude, and withdraw from the jury each and all of the said questions and answers, upon the grounds stated at the time said motion was made that said questions and answers were irrelevant, immaterial, prejudicial, and dealt with other matters and things irrelevant and disconnected with the issues in the case.

The Court denied this motion in writing, making in so doing the following order:

" When the witness Conley was still on the stand his testimony not having been finished, the defendant, by his attorneys, moved to rule out, withdraw and exclude from the jury each and all the above questions and answers, because the same are irrelevant, immaterial, prejudicial, and deals with other matters and things irrelevant and disconnected with the issues of this case. After hearing argument of counsel, the Court overruled the motion to rule out, withdraw or exclude said above stated question and answers from the jury, but permitted the same to remain before the jury.

In making said order and declining to rule out, exclude and withdraw said questions, and each of them as well as all of the answers and each of them, the Court erred, for the reason that said questions and answers, each and all of them were irrelevant immaterial, illegal, prejudicial, and dealt with other matters and things wholly disconnected with the issues on trial, and the same amounted to accusing the defendant of other and independent crimes. Defendant contends that this ruling of the Court was highly prejudicial to the defendant, tending to disgrace him before the jury and expose him to a conviction, not because

he had committed murder, but because he was accused of depravity and degeneracy.

When the third of the direct questions here sought to be excluded was asked by the solicitor the defendant objected because the evidence sought would be immaterial. The Court sustained the objection but the solicitor continued with the balance of the direct questions and answers here objected to and the cross questions where thereafter asked and the answers given. The Court therefore erred in not excluding and withdrawing all of said testimony.

14. Because the Court erred in not ruling out, excluding, and withdrawing the following evidence direct and cross of the witness Conley, upon motion of defendant's counsel, made while Conley was still on the stand.

" I always stayed on the first floor like I stayed April 26th and watched for Mr. Frank while he and a young lady would be up on the second floor chatting. I don't know what they were doing; ~~he only told me they~~ wanted to chat. When the young ladies would come there, I would sit down at the first floor and watch the door for him. I watched for him several times, There will be one lady for Mr. Frank and one lady for another young man who was there. Mr. Frank was there along on Thanksgiving Day. I watched, for him several times. ~~A tall, heavy built lady for him several times.~~ A tall, heavy built lady came there that day. He told me when the lady came he would stamp and let me know that was the lady, and for me to go and lock the door. Well, the lady came, and he stampped and I locked the door. He told me when he got through with the lady he would whistle for me to go and unlock the door---- And he says; (on April 26th,) "Now, when the lady comes, I will stamp like I did before"----I have seen Mr. Frank there in the office two or three times before Thanksgiving, and a lady was in the office, and she was sitting down in a chair and she had her clothes up to here, and he was down on his knees, and she had her hands on him. I have, also, seen Mr. Frank another time with a young lady lying on the table. She was on the edge of the table. I don't know the name of the woman that was there Thanksgiving Day; the man that was there was

Mr. Dalton---The lady that was there was a tall built lady, heavy weight, she was nice looking, had on a blue looking dress with white dots in it, had on a greyish looking coat with kind of tails to it, white slippers and white stockings.

Cross Examination.

-------The first time I watched for Mr. Frank was sometime during last summer, about in July. I would be there sweeping and Mr. Frank come out and called me in the office. That was on a Saturday, about three o'clock. As to what Mr. Dalton would do, the young lady that worked at the factory would go out and get him and bring him back there. That was Mr. Dalton's lady. The lady that was with Mr. Frank was Miss Daisy Hopkins. She worked up there on the fourth floor. When Mr. Frank called me, there was a lady in the office with him. He talked to me in the lady's presence. She was Miss Daisy Hopkins. That was three or half past three. He would say: "Did you see that lady go out there? You go down and see nobody don't come up here and you will have a chance to make some money". One lady had already gone on out to get that young man, and the other lady was present. She came back after a while and brought Mr. Dalton with her. They walked into Mr. Frank's office and stayed there ten or fifteen minutes, came back down, and she says: " All right, James", and I say: "All right": and I would go back there to the trap door that leads down to the basement, and I pulled up the trap door, and they went down there. I opened the door because she said she was ready; I knowed where she was going. Mr. Frank told me to watch; he told me where they were going. I don't know how long they stayed there: I don't know what time they came back, but they came back after a while, the same way they came down. I kept the doors shut--not locked--all the time, and never left it. Mr. Dalton gave me a quarter and went out laughing, and the lady went up the steps. She didn't stay very long and came down, and after that Mr. Frank came down and left. That was about half past four. I left before Mr. Frank did. He gave me a quarter That was the first Saturday. The next Saturday was about two weeks after that, about the last of July or the first of August. He told me the same Saturday that I was there: "Now, you know

what you done for me last Saturday. I want to put you wise, this Saturday". I says: " All right, what time"? He says: "Oh, about half past". He got back from lunch about a quarter past two, then Mr. Holloway left, and then Miss Daisy Hopkins came into his office. Mr. Frank came out, popped his fingers and bowed to me- bowed his head to me, and then went back in the office. Then, I went down and stood by the door. I didn't lock it: I shut it. I don't know what happened next! I didn't hear him come out of his office at all. Then I went down and watched. No, I didn't hear her come out of his office. Mr. Frank stayed there about a half an hour that day, then the girl went out. He gave me a half a dollar, this time. The next time I watched for him was before Thanksgiving Day, sometimes in the winter, about the last part middle of August. When he told me he wanted me to watch for him that time, it was on the fourth floor, right at the elevator. Snowball was standing there then. Mr. Frank says: "I want to put you wise again for today." He came back about half past two, and he says: "She will be here in a minute". The lady that came in was one that worked on the fourth floor. I don't know her name. It wasn't Miss Daisy Hopkins. She had hair like Mr. Hooper's grey haired. She had a green suit of clothes. She went to Mr. Frank's office, and then I watched. I didn't hear them leave Mr. Frank's office. Then she came out, and then he came out and went out the factory, and then he came back, I stayed there waiting for him. He said: "I didn't take out that money". I says: " I seed you didn't". He said: "That's all right, old boy, I don't want you to have anything to say to Mr. Herbert or Mr. Darley about what's going on around here". The next time I watched was Thanksgiving day. I met Mr. Frank there about eight o'clock in the morning. He says: " A lady will be here in a little while; me and her are going to chat. I don't want you to do no work; I just want you to watch". The lady came in about a half an hour. I didn't know her; I have never seen her working at the factory. I had seen her at the factory two or three nights before Thanksgiving day in Mr. Frank's office, about eight o'clock. She was a nice looking lady. I think she had on black clothes. She was a very tall, heavy built lady. The front door was open when she came Thanksgiving Day. She went up stairs and went in Mr. Frank's office. Mr. Frank

came out and stamped right above the trash barrel. I was down stairs about the trash barrel. He told me he was going to stamp two times; then he stamped, and I closed the door, and then I came back and sat on the box about an hour and a half. Mr. Frank says: "I'll stamp after this lady comes, and you go and shut the door and turn that night latch" That's the first time he told me to lock the door, and he says: "If everything is all right, you take and kick against the door". And I kicked against the door. I stayed there about an hour and a half that time. Then, Mr. Frank came down and unlocked the front door, looked up the street, and then went back and told the lady to come down. She came down and said to Mr. Frank, while they were walking: "Is that the nigger?" and he says: "Yes"
And she says: "Well, does he talk much?"; and he says: "He's the best nigger, I've ever seen." They went on out together: Mr. Frank came back. I went in his office. He gave me a $1.25. The lady had on a blue skirt with white dots in it, and white slippers and white stockings, and a grey tailormade coat with pieces of black velvet on theedges of it, and a black hat with big black feathers over. The next time I watched for him was a Saturday in January, right after the first of the year. He said there will be a young man and two ladies that would be there that Saturday morning. I was standing by the side of Gordon Bailey on the elevator when he come and told me that about half past seven in the morning, and he said I could make some money off this man. Gordon Bailey and me was on the elevator together. He could hear what Mr. Frank was saying. I got through cleaning at about a quarter after two and stayed at the door. It was open, and the ladies came about half past two or three o'clock, and the young man came in and says: "Mr. Frank put you wise?" "Didn't he tell you to watch the door, two ladies and a young man would be here?" He said: "Well, I'm the one". Then he come and told the ladies to come on, and they went up stairs towards the clock; they stayed there about two hours. I didn't know either of the ladies. I don't know what they had on. The man was tall, slim built, heavy man, he didn't work there. I seen him talking to Mr. Holloway frequently during the week. That's the last time I watched for him. Snowball and I were in the box

room when he told me to watch for him that time. I don't know if he knew Snowball was there or not. The day before Thanksgiving when he talked to Snowball, we were on the elevator. Snowball could have heard anything that was said: Mr. Frank saw Snow ball standing there----Miss Daisy Hopkins, worked at the factory from June 1913 until Christmas. I worked on the same floor with her. I am sure she worked there from June until about Christmas. She was a low lady, kind of heavy; she was pretty, chunky, kind of heavy weight. I remember that she was there in June because I took a note to Mr. Herbert Schiff which she gave me. Mr. Schiff said it had June on it, when he read it. It was on the outside of the note. I looked and seen something on it; I don't what what it was. It was on the back of the note--June something, and he laughed at it. I know Miss Daisy Hopkins, left at Christmas, because Mr. Dalton told me that she wasn't coming back. It was one Saturday. Mr. Dalton was a slim looking man and tall, with thick eye lashes, black hair, light complected, weighed about 135 pounds, about thirty five years old. I seen him around the factory several times. The first time was somewhere along in July, when he come in there with a lady. About two weeks after that, I met him at the door, about the last of August. The next time was just about Thanksgiving Day. Then I saw him after Christmas when he come there with a lady. Him and the lady was down in the basement. I don't know who she was Last time I saw him was down at the station house. The detectives brought him down there. First Saturday I watched for Mr. Frank, I saw Mr. Holloway there, he left about half past two. I saw Mr. Darley that morning; don't know what time he left. The next Saturday I watched, Mr. Holloway wasn't there, he was sick. That was about the last of July or first of August. The next time I watched about the last of August, I saw Mr. Holloway. He left about two o'clock. The day I watched for him in September, after Thanksgiving Day, I saw Mr. Holloway leave about half past two. Schiff and Darley were there. I disremember who I saw there in January, except Mr. Holloway. Sometimes some of the girls worked there on Saturdays. Don't remember any girls that worked there on the first Saturday that I watched. The second time I watched,

I think some ladies were working up on the fourth floor. I don't know about the third time, and I don't know whether anybody was working there Thanksgiving afternoon or not. I didn't see Mr. Schiff at all that day. I will swear he wasn't in Mr. Frank's office that day. I don't remember whether any ladies worked there the other times I was watching, or not.....,I don't know whether I told them (detectives) about watching for Frank at that time . I haven't got any opinion about it, I haven't got any recollection. He told me about stamping and whistling on Thanksgiving Day, but didn't do it until I set then on the box.

Conley had testified both on direct and had been cross examined for a day and a half on other subjects, as above set out, and while on the stand and after testifying as above set out, counsel for the defendant moved to rule out, exclude and withdraw each and every part of the evidence given by the witness as to all transactions had between Frank, and other women at other times than on the day of the alleged murder, upon the grounds. made at the time, that evidence of such transactions was irrelevant, immaterial, illegal, prejudicial, and dealt with other matters and things irrelevant to and disconnected with the issues on trial, and the same amounted to accusing the defendant of other and independent crimes.

The evidence next above set out was, and is, all the evidence given by Conley dealing with Frank's transactions with women at other times than on the day of the murder, and was the evidence sought to by ruled out, excluded, and withdrawn from the consideration of the jury.

The Court declined, upon the motion made and for the reasons argued, to rule out, exclude and withdraw such evidence from the jury, but left the jury free to consider the same.

The ruling of the Court was, and is, erroneous, for the reasons alleged above, and the Court erred in not granting the order asked, ruling out, excluding, and withdrawing such evidence from the jury.

When the solicitor first sought from the witness Conley the evidence here sought to be excluded the defendant objected because the evidence sought to be brought out would be immaterial

The Court ruled that such evidence would be immaterial, but after this ruling the solicitor brought out the direct testi- and exoluded. After the direst testimony supra had been brought out money here soughtto be ruled out after the Court's ruling, the cross testimony supra here sought to be withdrawn was also brought out in an effort to modify or explain the direct evidence. Under the circumstances the Court ought to have granted the motion to exclude and withdraw all such evidence and for failing to do so committed error.

Movant assigns as error the action of the Court in allowing this evidence to go before the jury because the same was illegal irrelevant, immaterial and hurtful to the defendant.

15. Because the Court permitted over the objection of defendant's counsel made when the evidence was offered, that such evidence was irrelevant and immaterial, the witness Conley to swear that the police officers took him down to the jail, and to the door where Frank was, but that he never saw Frank at jail and had no conversation with him there.

The Court erred in permitting the introduction of this evidence, for the reasons above stated. It was hurtful for the reason that the solicitor contended, in his address to the jury, that Frank declined to see Conley, and that such declination was evidence of his guilt.

16. Because the Court, over objection of the defendant, made at the time the evidence was offered, that the same was irrelevant, immaterial, and not binding on Frank, permitted the witness, Mrs. White, to testify that Arthur White, her husband, and Campbell are both connected with the Pencil Company, and that she never reported seeing the negro on April 26th, 1913, which she testified she did see, in the pencil factory to the City detectives until May the 7th, 1913.

For the reasons above stated, the Court erred in not excluding evidence, and for the reason that the solicitor, in his address to the jury, contended that the fact that there was a negro (which he contended was Conley) in the factory the morning of April 26th was concealed from the authorities, and that such concealment was evidence of Frank's guilt.

17. Because the Court permitted, over the objection of defendant's counsel made when the same was offered, that the same was irrelevant and immaterial, the witness Mangum, to testify that Conley and another party went down from the pencil factory to the jail, that he had a conversation with Mr. Frank about confronting Conley, Frank then being on the fourth floor of the jail; that Chief Beavers, Chief Lanford, and Mr. Scott. with Conley, came to the jail to see Frank, and they asked him if they could see him; that he said: "I will go and see: and, if he is willing, it is all right": that he went to Frank and said: "Mr. Frank, Chief Beavers, Chief Lanford and Scott and Conley want to talk with you, if you want to see them?" that Frank said: "No my attorney is not here, and I have got nobody to defend me; that his lawyer was not there, and that no one was there to listen to what might be said.

The Court erred in admitting this evidence for the reasons above stated.

The solicitor in his argument pressed on the jury that the failure of Frank to face this negro and the detectives was evidence of guilt, and movant contends same was prejudicial.

18. Because the court erred in permitting the witness, Dr. H. F. Harris, over the objection of the defendant, made at the time the testimony was offered that the same was irrelevant and immaterial, to testify:

". I might preface my remarks on this by saying that more than 12 or 15 years ago someone told me that the reason that cabbage was considered indigestible was because they were ordinarily cooked with meat or grease, and with the idea of settling this question, on my clinic I got a lot of patients whose stomachs were not in very good condition, and made a number of experiments, particularly to determine the matter as to whether or not this was the case. During the course of the experiment that I made at that time, I was struck by the fact that the behaviour of the stomach after taking a small meal of cabbage and bread, either corn bread or biscuit,---that the behaviour of the stomach was practically the same as after taking some biscuit and some water alone. 74.

"I discovered, as I say, at that time, that out idea about how quickly cabbage digested were rather erroneous, and as I remarked a moment ago, I observed that the stomach freed itself of a mixture of cabbage and bread just about as quickly as we only gave bread alone; the amount of recovery on the part of the mucuous membrane in the way of sufficient gastric juices was about the same practically or probably a little bit more recovery with cabbage.

" It is the only way I can get at it, it is the only real knowledge I have on the subject in connection with thework that was done in this particular instance here.

The witness Harris testified that from the state of the digestion of the food found in the stomach of Mary Phagan he could say she died in 30 or 40 minutes after her last meal of bread and cabbage, over the objection above made and the further objection that the witness could not give the result of other and different experiments made 12 or 15 years ago upon persons ""whose stomach were not in a very good condition," and not under the same circumstances and conditions, to sustain and bolster up the experiment made upon the stomach of Mary Phagan, and to sustain his assertion that Mary Phagan died from 30 to 40 minutes after she ate her last meal.

The Court overruled the objection and admitted the testimony and in doing so, the court for the reasons indicated committed prejudicial error.

19. Because the court erred in permitting the witness Dr. H. F. Harris, to testify, over the objection of the defendant made when the evidence was submitted, that the same was irrelevant and immaterial and that experts could not give to sustain their opinions individual and isolated experiments but must answer from their knowledge of the science obtained from all sources, that—

"Knowing the facts that cabbage would pass out of the sto mach very quickly in a normal one, I ascertained her digestion and as soon as I saw the cabbage in this case, I at once felt

certain that this girl either came to her death orpossibly the blow on her head at any rate, a very short time, perhaps three quarters of an hour or half an hour or forty minutes, or something like that, before death occurred. I then began a number of experiments with some gentlemen who had normal stomachs with a view of judging of the time.

" I had the mother of the girl to cook some cabbage and it was given to people with absolutely normal stomachs; that I know from investigations of their stomachs.

". I will state in general terms there were only four persons experimented upon, and two of them were experimented upon twice in this connection, and in every single instance the effect on the cabbage was practically the same, that is it was almost entirely digested, notwithstanding the fact that I had those men given some pieces just as large as were found in Mary Phagan's stomach, and I took pains to see to it that they did not chew this cabbage, but they ate it very rapidly, in three or four minutes, gulped it down, so that we would have as nearly as possible the conditions that I was certain existed at the time Mary Phagan ate her last meal. The result of this, you gentlemen have seen.

The witness here was permitted over objction as above stated to exhibit several small glass jars containing what purported to be partly digested cabbage, resulting from experiments made.

"Now I know from my observations of the cases that I present here that the digestion of thesepersons was normal. I did not make a microscopic examination of the stomachs of the gentlemen experimented upon, but I made an examination of their stomachs to see how they secrete their food, which is the only way we can tell. You can take the fluids and tell, whether the stomach is normal, it is the only way we possess.

"I merely wish to call attention to the fact that I made experiments which varied in the time that the contents were in the person's stomach, from 38 minutes, which was the time the contents were in the stomach of the boy 14 years of age, to 70 minutes, in another one of my cases, and the results

indicated in every instance, from 38 to 70 minutes in every single instance, the cabbage was practically digested, practically altogether so.

Over objections made as is above stated, the Court permitt ed this testimony to go to the jury and in doing so committed preju dicial error. Experts can testify from the given state of any science, but cannot explain the process or results of particular experiments made by themselves.

3o. Because the Court permitted the witness Harris to tes- tify as follows:

"I wish to say that I made a microscopic examination of those contents of the stomachs, and while I found in Mary Phagan's case, except in the case of particles of cabbage that were chew ed up too small to give sufficient indication the cabbage that was in the stomach gives every indication of having been introduced into it within three quarters of an hour; the microscopic examination showed plainly that it had not begun to dissolve, or at least only a very slight degree, and it in- dicated that the process of digestion had not go on to any extent at the time this girl was rendered unconscious at any rate. I wish further to state that on examining Mary Phagan's stomach I found that the starch she had eaten had undergone practically no alteration: there were a few of the starch cells which showed the beginning of the process of digestion, having changed into the substance called erthro-dextrine, but these were very much rarer than is the case in a normal stomach where the contents are exposed to the actions of the digestive fluids for something like, say 50 or 60 minutes. The contents taken from the little girls stomach were examined chemically, and the result of the chemical examination showed that there were only slight traces of the first action of the digestive jucies on the starch thus confirming my microscopic examination, and showed clearly that only the very beginning of digestion had proceeded in this case

". As I was ... of even greater importance in this matter it was found that there were 160 cubical solids, or about five and a half ounces of total contents remaining in the stomach, and after an ordinary meal of cabbage and bread, this is not the case. Under ordinary conditions, we get out perhaps on

an average of something like anywhere from 50 to 60 or 70 cubic centimeters, or, say from a half to a third of what was found inthis case, and it was plainly evident that none of this material, had gone into the small intestine, because that was examined for it from the mouth out to the beginning of the large intestine, which is many feet away from it in the neighborhood of something like 25 feet away, and there was very very little food found in the small intestine, none at all, as a fact in the small intestine, which showed clearly, as I have said, that the contents of the stomach had not begun to be pushed on into the small intestine at the time that death occurred. This pushing on begins in about half an hour after such a meal as this and by the time an hour is reached, the greater part of what is introduced into the stomach is already down in the small intestine so that it becomes very clear from this that digestion had not proceeded to any extent at all.

The above testimony of Dr. Harris was objected to when offered because the same was argumentative. It was not, as movant contends a statement of fact, scientific or otherwise, from which the jury could for themselves draw conclusions, but was a mixture of facts and arguments.

The Court declined to rule out this testimony, and declined to force the witness to abstain from arguments and state the facts. This argument of the witness was clearly prejudicial to the defendant and failure to rule out the testimony was error

31. Because the Court permitted the witness C. B. Dalton to testify over the objection of defendant, made when the evidence was offered and before cross examination, that the testimony was irrelevant, incompetent, immaterial and illegal, dealt with other matters than the issues on trial and was prejudicial to the defendant's case; that he knew Leo Frank, visited the National Pencil Co's plant and saw Frank there four or five times, that he was in the office of Leo Frank, that he had been there three or four times with Miss Daisy Hopkins, and at these times Frank was in his office; that the witness had been in the basement, going down the ladder, that Frank knew he was in the building, but does not know whether Frank knew he was in the

basement; that he saw Conley there when he went there; that sometimes when he saw him in his office there would be ladies there, sometimes there would be two and sometimes one; he did not know how often he saw Conley there, but sometimes he would give him a quarter, that he did that a half dozen or more times that he went to the factory about once a week for a half dozen weeks, that he saw Frank there in the evenings and in the day times, sometimes he would see cold drinks in the office, Coco Cola, lemon limes, etc. that sometimes he saw beer in the office, that he never saw ladies there when beer and cold drinks were there do anything and never saw them do any writing.

The Court permitted this testimony of Dalton to be heard over the objections made as aforesaid and for such reason committed error.

This evidence was peculiarly prejudicial to the defendants because the solicitor insisted, in his argument, that in addition to being independent testimony looking to the same end, that it corroborated the testimony of Conley as to immoral conduct on the part of Frank.

22. Because the Court permitted the witness C. B. Dalton to be asked the following questions and make the following answers, over the objection of the defendant made at the time the evidence was offered, and before cross examination, that the testimony was irrelevant, incompetent, immaterial,and illegal, dealt with other matters and things than the issues of the trial was prejucidical to the defendant.

Q. Mr. Dalton, have you ever worked at the pencil factory?

A. No sir.

Q. Do you know Leo M. Frank?

A. Yes sir.

Q. Do you know Daisy Hopkins?

A. Yes sir.

Q. Do you know Jim Conley?

A. Yes sir.

Q. Have you ever visited the National Pencil Facotry?

A. Yes, sir, I have been there some.

Q. How many times?

A. I don't know; three, or four, or five times.

Q. Were you ever in the office of Leo M. Frank?

A. Yes sir.

Q. On what occasion?

A. I have been there two or three times with Miss Daisy.

Q. Where was Frank when you were there?

A. He was in the office: I don't know whose office it was, but he was in the office.

Q. Were you ever down in the basement?

A. Yes sir.

Q. What part of the basement did you visit? Can you tell me on that diagram (Indicating).

A. I have been down that ladder.

Q. (Looked at No. 12) Did Frank have any knowledge of your business down there?

A. I don't know; he knowed I was in the basement; he knowed I was there.

Q. Was Conley there when you were there?

A. Yes sir, I seen Conley there, and the night watchman too-- he wasn't Conley.

Q. At the time you saw Frank there was anybody else in the office with him?

A. Yes sir, there would be some ladies there; sometimes two and sometimes one, maybe they didn't work in the morning and would be there in the evening.

Q. How many times did you pay Jim Conley anything?

A. I don't know.

Q. About?

A. Gave him a quarter when I was going in sometimes: I expect I gave him a half a dozen or more-- about every week.

Q. What time of day or night was it that you saw Mr. Frank in his office?

A. It was in the [illegible] time, sorter.

Q. What, if anything, would he have up there at the time?

A. Some times he would have cool drinks/

Q. What kind of drinks?

A. Coco Cola, lemon lime, or something of that sort.

Q. What else?

A. Some beer, some times.

A. Some beer?

A. Yes sir.

Q. Were those ladies doing any stenographic work up there?

A. I never seed them doing any writing. I never stayed there long, but I never seed them doing any writing.

Q. You never saw anything of that kind going on?

A. No sir.

The court permitted these question and answers to be heard by the jury, over the objection of the defendant, aforesaid, and committed error, for the reasons aforesaid. His evidence was particularly prejudicial to the defendant, because the solicitor insisted in his argument that it corroborated the testimony of Conley as to immoral conduct on the part of Frank.

The Court erred for the reason above stated in not ruling out and excluding from the Jury each and all of the above questions and answers.

(2) (10) 23. Because the Court permitted, over the defendant(s objection, made when the testimony was offered, that it was illegal, immaterial, and because it could not be binding on the defendant, the witness S. L. Rosser, to testify that since April 26, 1913 he had been engaged in connection with this case; that he visited Mrs. Arthur White, subsequent to April 26; that the first time the witness ever knew that Mrs. White ever claimed to have seen the negro at the factory when she went into the factory on April 26th, was some time about the 6th or 7th of May.

The Court, over objections as stated, admitted the testimony just above, and in doing so erred, for the reasons herein stated

This was pecularly prejudicial to the defendant, because the solicitor contended in his argument to the jury that the fact that factory employees did not disclose the fact that Mrs. White saw the negro on April 26th was evidence that the defendant was seeking to suppress testimony material to the discovery of the murderer. 81.

24. Because, during the trial, and on August 6, 1913, pending

the motion of defendant(s counsel to rule out the testimony of the witness Conley tending to show acts of perversion on the part of the defendant and acts of immorality wholly disconnected with and disassociated from this crime. (Such evidence being set out and described in grounds 13 and 14 of this motion)

The Court declined to rule out said testimony, and immediately upon the statement of the Court that he would let such testimony remain in evidence before the jury, there was instant, pronounced and continuous applause throughout the crowded court room wherein the trial was being had, by clapping of hands, and by stamping of feet upon the floor.

The jury was not then in the same room wherein the trial was being had, but in an adjacent room not more than fifty feet from where the judge was sitting and not more than fifteen or twenty feet from portions of the crowd applauding, and so close to the crowd, in the opinion of the Court, as to probably hear the applauding. Immediately upon said appluding the defendant's counsel moved the Court for a mistrial of the cause, and, upon the announcement of the Court that he would not grant a mistrial, moved the Court to clear the court room, so that other demonstrations could not be had.

The Court refused to grant a mistrial and declined to clear the court room.

In refusing a mistrial and in declining to clear the courtroom, the Court erred. The passion and prejudice of those in the crowded court room were so much aroused against the defendant, as contended by counsel for the defendant, that he could not obtain a fair and impartial trial.

The Court as movant contends, also erred in not clearing the court room of the disorderly crowd, but left them in the court room, where their very presence was a menace to the jury.

It is true that the Court did threaten that upon a repitition of such disorder he would clear the court room, but such a threat, as movant contends, was wholly inadequate, as evidenced by the fact that during the same day of the trial, while the

witness Harris was upon the stand, the crowd laughed jeeringly when Mr. Arnold, one of the defendant's counsel, objected to a comment of the solicitor, and that, too, in the presence of the jury.

And again,during the trial, when Mr. Arnold, one of the defendant's counse, objected to a question asked, the following colloquy took place:

" Mr. Arnold: I object to that you Honor; that is, entering the orders on that book merely; that is not the questions he is asking now at all.

The Court: What is the question he is asking now?

(Referring to questions asked by the Solicitor General).

Mr. Arnold: He is asking how long it took to do all this work connected with it. (Referring to work done by Frank the day of the murder.)

The Court: Well, he knows what he is asking him"

Upon this suggestion of the Court, that the Solicitor knew what he was doing, the spectators in the court room applauded creating quite a demonstration.

Mr. Arnold again complained of the conduct of the spectators in the court room. The Court gave no relief, except directing the Sheriff to find out who was making the noise, to which the Sheriff replied that he could maintain order only by clearing the court room.

25. Because the Court erred in admitting, over the defendant's objection, made at the time thetestimony was offered, that it was illegal, immaterial and irrelevant, the introduction of cer tain glass bottles containing partly digested cabbage, which resulted from tests made on other parties by the witness, Dr. Harris, wherein the cabbage which he claimed to be cooked the same was as the cabbage eaten by Mary Phagan, after it had remained in the stomach of such other parties from 30 to 50 minutes were taken out by means of a stomach pump.

The purpose of these experiments was to show the state of digestion of this cabbage in comparison with the state of digestion of the cabbage taken from the stomach of Mary Phagan, so as to sustain the contention of the State that Mary Phagan was killed within 30 or 40 minutes after eating the cabbage and bread

The Court admitted these sample of partly digested cabbage taken from the stomach of others, as aforesaid, and in doing so, committed error for the reasons above stated, and for the furth er reason that there was no evidence, as the defendant's counsel contend, that the same circumstances and conditions surrounded these other parties in the eating and digestion of the cabbage as surrounded Mary Phagan in the eating and digestion on her part and no evidence that the stomachs of these other parties were in the same condition as was Mary Phagan!s.

26. Because the Court, in permitting the witness, Harry Scott to testify over the objection of defendant, made at the time the testimony was offered, that same was irrelevant, immaterial and not binding upon the defendant, that he did not get any information from any one connected with the National Pencil Company that the negro Conley could write, but that he got his information as to that from entirely outside sources, and wholly disconnected with the National Pencil Co.

The court permitted this testimony to be given over the objections above stated, and in doing so, for the reasons therein stated, committed error.

This was prejudicial to the defendant, because the negro Conley at first denied his ability to write and the discovery that he could write was as the State contended, the first step towards connecting Conley with the crime, and the solicitor contended in his argument to the jury that the fact that the Pencil Company authorities knew Conley could write and did not disclose that to the State authorities, was a circumstance going to show the guilt of Frank.

27. Because the Court permitted the witness, Harry Scott, to testify over the objection of defendant's counsel, made when the testimony was offered, that the same was irrelevant, immaterial, illegal and not binding on the defendant, that the witness first communicated Mrs. White's statements about seeing a negro on the [illegible] floor of the pencil factory on April [illegible] Chief Lanford, and Bass Rosser, that the information was given to the detectives on April 28th.

The Court, over the defendant's objections, permitted the above testimony to be given, and in doing so erred for the reasons

above stated. This was prejudicial to the defendant, because it was contended by the State that this witness. Harry Scott., who was one of the Pinkerton detectives who had been employed to ferret out the crime, by Frank acting for the National Pencil Company, had not promptly informed the officials about the fact of Mrs White's seeing this negro and that such failure was evidence pointing to the guilt of Frank.

This witness was one of the investigators for the Pinkerton Detective Agency, who was employed by Frank acting for the National Pencil Company to ferret out this crime.

28. Because the Court permitted Harry Scott, a witness for the State, to testify over the objection of the defendant, made at the time that same was offered, that the same was irrelevant, immaterial, illegal and prejudicial to the defendant/ that the witness, in company with Jim Conley, went to the jail and made an effort to see Frank. And that after Conley made his last statement(the statement about writing the notes on Saturday) Chief Beavers, Chief Lanford and the witness went to the jail for the purpose of confrontingFrank. That Conley went with them that they saw the Sheriff and explained their mission to him and the Sheriff went to Frank's cell, that the witness saw Frank at the jail on May 3rd, (Saturday), and that Frank refused to see Conley only through Sheriff Mangum; that was all

The Court, in admitting this testimony over the objections made, erred for the reasons stated above. This was error prejudicial to the defendant, because the witness Mangum, over the defendant's objection, had already been allowed to testify that Frank declined to see Chief Lanford, Chief Beavers, the witness and Conley, except with the consent of his counsel or with his counsel, and the solicitor in his argument asserted that the failure of Frank to see the witness while he wasemployed by the Pencil company to ferret out the crime in the presenceof the negro and the two chiefs was strong evidence of his guilt.

29. Because J. M. Minar, a newspaper reported for the Atlanta Georgia, was called by the defendant for the purpose of impeaching the witness George Epps, who claimed that on Saturday of the

crime he accompanied Mary Phagan from a point on Bellwood Ave., to the center of the City of Atlanta, by showing that on April 27th at the house of Epps, he asked George, together with his sister, when was the last time they saw Mary Phagan. In reply, the sister of Epps said she had seen Epps on the previous Thursday, but the witness Epps said nothing about having come to town with Mary Phagan the day of the murder but did say he had ridden to town with her in the mornings of other days occasionally

Upon cross Examination, over the objection of defendant's counsel made when the cross examination was offered, that the same was irrelevant, immaterial, incompetent, prejudicial to the defendant, and not binding on the defendant, the witness was allowed to testify that he went to the houseof Epps in his capa city of reporter; that one Clofine was the City Editor and that the witness was under him and that Clofine was a constant visitor of Frank at the jail.

The Court admitted this testimony over the objections aforesaid and in doing so erred . There was no evidence of any relationship between Frank and Clofine which could show any prejudice or bias in Frank's favor, even by Clofine and certainly none on the part of the witness Miner.

30. Because the Court erred in permitting the witness Schiff to testify over the objection of defendant made at the time the testimony was offered that the same was incompetent, irrelevant and immaterial, that it was not Frank's custom to make engagement Friday for Saturday evening, then go off and leave the financial sheet that had to be over at Montag's Monday morning not touched.

The Court permitted this testimony over the objection of defendant and therein erred, for the reasons stated.

This was prejudicial, because it was the contention of the State that Frank, contrary to his usual custom, made an engagement on Friday before the crime to go to the baseball game on Saturday afternoon, leaving the financial sheet unfinished, although such sheet ought to have been prepared on Saturday and sent to Montag's to the General Manager of the factory on Monday. The only material issue was what took place Friday and Saturday and

it was wholly immaterial as to what his custom previous to that time had been.

31. Because, during the trial the following colloquy took place between the solicitor and the witness Schiff:

Q. Isn't the dressing room back behind these doors?

A. Yes, it is behind these doors.

Q. That is the fastening of that door, isn't it?

A. Yes.

Q. And isn't the dressing room back there then?

A. That isn't the way it is situated.

Q. It isn't the way it is situated?

A. It is not, no, sir.

Q. Why, Mr. Schiff, if this is the door right here and—

A. Mr. Dorsey I know that factory.

Q. Well, I am trying to get you to tell us if you know it; you have no objection to telling it, have you?

(Here objection was made by defendant's counsel that Schiff had shown no objection to answering the questions of the solicitor and that such questions as the one next above, which indicated that the witness did object to answering was improper.)

Mr. Dorsey: I have got a right to show the feeling.

The Court: Go on, now, and put your questions.

Mr. Dorsey: Have you any objections to answering the question, Mr. Witness?

A. No, sir; I have not.

These comments of the solicitor, reflecting upon the witness were objected to and the Court urged to prevent such reflections.

This the Court declined to do and allowed the solicitor to repeat the insinuation that the witness was objecting to answering him.

This was prejudicial error. The witness deserved no such insinuations as were made by the solicitor and in the absence of the requested relief by the Court, the jury was left to believe that the reflections of the solicitor were just.

This witness was one of the main leading witnesses for the defendant, and to allow him, movant contends, to be thus unjustly discredited was harmful to the defendant.

32. Because the Court erred in declining to allow the witness Miss Hall to testify that on the morning of April 26th, and before the murder was committed, Mr. Frank called her over the telephone, asking her to come to the pencil factory to do steno graphic work, stating at the time he called her that he had so much work to do that it would take him until six o'clock that day to get it done.

The defendant contends that this testimony was part of the res gestae and ought to have been heard by the Court, and failure to do so committed error.

33. Because, while Philip Chambers, a youth of 15 years of age, and a witness for the defendant, was testifying the following occurred.

Q. You and Frank were pretty good friends, weren't you?

A. Well, just like a boss ought to be to me.

Q. What was it that Frank tried to get you to do that you told Gantt about several times?

A. I never did complain to Mr. Gantt.

Q. What proposition was it that Mr. Frank made to you and told you he was going to turn you off if you didn't do what he wanted you to?

A. He never made any proposition to me.

Q. Do you deny that you talked to Mr. Gantt and told him about these improper proposals that Frank would make to you and told you that he was going to turn you off unless you did what he wanted you to do?

A. I never did tell Gantt anything of the sort.

(Objection was here made by the defendant that the answer sought would be immaterial.)

The Court: Well, I don't know what it is, ask him the question.

Q. Didn't you tell Gantt the reason why Frank said he was going to turn you off.

A. No sir.

Q. Didn't Frank tell you he was going to turn you off unless you would permit him to do with you what he wanted to do.

A. No sir.

Q. No such conversation ever occurred?

A. No sir.

Q. With J. M. Gantt, the man who was bookkeeper and was turned off there?

A. No sir, I never told him any such thing.

Q. No such thing ever happened?

A. No sir.

Mr. Arnold: Before the examination progresses any further, I want to move to rule out the witness said there wasn't any truth in it, but I want to move to rule out the questions and answers in relation to what he said Frank proposed to do to him right now. I think it is grossly improper and grossly immaterial; the witness says there is no truth in it, but I move to rule it out.

Mr. Dorsey: We are entitled to show the relations existing between this witness and the defendant, your Honor.

Mr. Arnold: We move to rule out as immaterial, illegal and grossly prejudicial and as grossly improper, and the gentleman knows it, or ought to know it, the testimony that I have called you Honor's attention to.

The Court: Well, what do you say to that, Mr. Dorsey? How is this relevant at all over objection?

Mr. Dorsey: We are always entitled to show the connection, the association, the friendship or lack of friendship, the prejudice, bias or lack of prejudice and bias, of the witness, your Honor, You permitted them, with Conley, to go into all kinds of proposals to test his memory and to test his disposition to tell the truth, etc. Now, I want to lay the foundation for the impeachment of this witness by this man Gantt to whom he did make these complaints.

The Court: Well, I rule it all out.

Mr.Arnold: It is the most unfair thing I have ever heard of, to try to inject in here in this illegal way, this kind of evidence, any man ought to know that it is illegal. It has no probative value, and has been brought in here by this miserable negro and I don't think any sane man on earth could believe it. It is vile slander and fatigues the indignation to sit here and hear things like this suggested, things that your Honor and

everybody knows are imcompetent.

The Court: Well, I sustain your objection.

Mr. Arnold: If the effort is made again, your Honor, I am going to move for a mistrial. No man can get a fair trial with such inuendoes and insinuations as these made against him.

The Court: Have you any further questions, Mr. Dorsey?

Mr. Dorsey: That is all I wanted to ask him. I will bring Gantt in to impeach him.

The Court: Well, I have ruled that all out.

Mr. Dorsey: Well, we will let your Honor rule on Gantt too.

The assertion by the solicitor that this witness did make the suggested complaints to Gantt, the insinuations involved in the questions of the solicitor that Frank had committed disgraceful and prejuducial acts with the witness and the final assertion of the solicitor when the Court ruled it out that he would introduce Gantt and let the Court rule on Gantt too, was highly prejudicial to the defendant. The Court erred in permitting the solicitor to make the insinuations and to indulge in the threat that he would let the Court rule on Gantt too, in the presence of the jury and without any rebuke on the part of the Court. The Court erred in not formerly withdrawing these insinuations and assertions from the jury and in not of his own motion severaly rebuking the solicitor for his conduct. The mere ruling out of the testimony was not sufficient. Nothing but a severe rebuke to the Solicitor General would have taken from the jury the sting of the insinuations and threats of the solicitor.

34. Because, while Mrs. Freeman was on the stand, after testifying as to other things she testified that while she and Miss Hall, on April 26th, were at the restaurant immediately contiguous to the pencil factory, and after they had left the factory at 11: 45 o'clock A. M., and had had lunch, that Lemmie Quinn came in and stated that he had just been up to see Mr. Frank.

Upon motion of the solicitor this statement that he had been up to see Mr. Frank was ruled out, as hearsay.

This statement of Lemmie Quinn was a part of the res gestae and was not hearsay evidence and was material to the defendant's cause. Lemmie Quinn testified that he saw Mr. Frank in his office just before he went down to the restaurant and had the conver-

sation with Mrs. Freeman and Miss Hall; this testimony was strongly disputed by the solicitor. Lemmie Quinn's statement that he was in Frank's office just before going into the restaurant was of the greates moment to the defendant, because it strongly tended to dispute the contention of the State that Mary Phagan was killed between twelve and half past.

The Court erred in ruling out and declining to hear this, for the reasons above stated. The testimony was relevant, material, and part of the res gestae and should have been sent to the jury

35. Because the Court permitted at the instance of the Solicitor General, the witness Sig Montag to testify over the objection of the defendant, made when same was offered, that same was irrelevant, immaterial, incompetent; that the National Pencil Co., employed the Pinkertons, that the Pinkertons have not been paid, but have sent in their bills, that they sent them in two or three times, that, otherwise, no request has been made for payment, and that Pierce, of the Pinkerton Agency, has not asked the witness for pay.

In permitting this testimony to go to the jury, over the objections above stated, the Court erred.

The introduction of this evidence was prejudicial to the defendant, for the reason that the solicitor contended that the pay due the Pinkertons by the pencil company was withheld for the purpose of affecting the testimony of the agents of that company.

36. Because the Court permitted, at the instance of the solicitor the witness Sig Montag, to testify over the objection of defendant, made at the time the testimony was offered that same was irrelevant, immaterial and incompetent, that he got the reports made on the crime by the Pinkertons and that they were made. That these reports came sometimes every day and then they did not come for a few days and then came again. That he practically got every day's report; that he got the report about finding the big stick and about the finding of the envelope, that he got them pretty close after they were made; that he knew about them having the stick and the envelope when he read the report. That he did not request Mr. Pierce, representing the Pinkertons, to keep from the police and the authorities the finding of the stick and the envelope.

The Court, over the objections of the defendant, on the grounds stated, permitted this testimony to go to the jury and in doing so erred.

This was prejudicial to the defendant because the solicitor insisted that the finding of the envelope and stick were concealed from the authorities.

37. Because the Court erred in permitting the witness Leech, a street car inspector, at the instance of the solicitor and over the objections of the defendant that same was irrelevant, immaterial, and incompetent, to testify that he had seen street car men come in ahead of their schedule time. That he had seen that often and had seen it last week. That he, Leech, had suspended a man last week for running as much as six minutes ahead of time. That he suspends them pretty well every week and that he suspends a man for being six minutes ahead of time just like he would for being six minutes late. It frequently happens that a street car crew comes in ahead of time and that they are given demerits for it and that he sometimes suspends them for it. That the street car crews are relieved in the center of town; that sometimes a crew is caught ahead of time when they are going to be relieved. That it is not a matter of impossibility to keep the men from getting ahead of time, although that does happen almost every day. That there are some lines on which the crew does not come in ahead of time because they cannot get in.

It frequently happens that the English Ave., car cuts off the River car and the Marietta car. It often happens that these cars are cut off. That when there is a procession or anything moving through town, it makes the crew anxious to get through town, that they are punished just as much for coming in ahead of time even a day like that as they would be any other day. They do their best to keep the schedule, but in spite of it they sometimes get off.

The Court permitted this testimony of the witness Leech over the objection of the defendant that the same was irrelevant, immaterial and incompetent, and in doing so committed error.

This was prejudicial to the defendant, because the crew on the English Ave., car upon which the little girl, Mary Phagan, came to town, testified that she got on their car at ten minutes to twelve. That under their schedule they should reach the corner of Broad and Marietta Street at 7-1/2 minutes past twelve. That they were on their schedule time on April 26th and did reach that place at 12-07 or 12:07-1/2. What other crews did at other times or even what this crew did on other occasions was wholly immaterial and in no way illustrated just what took place on the trip wherein Mary Phagan came to town. That other crews often came in ahead of time or that this particular crew often came in ahead of time was wholly immaterial.

38. Because during the examination by Mr. Arnold counsel for the defendant, of V. H. Kreigshaber a witness for the defendant, there was laughter in the audience, sufficiently generally distributed throughout the audience and loud enough to interfere with the examination. The testimony elicited from Kreigshaber was that Frank was a young man, and that Kreigshaber was older, but he didn't know how much older. Mr. Arnold called the Court's attention to the interruption for the purpose of obtaining some action from the Court thereon.

The Court stated that if there was other disorder no one would be permitted in the court room on the following day and requested the Sheriff to maintain order.

The defendant says that the Court erred in not then taking radical steps to preserve order in the court room and to permit the trial to proceed orderly and that a threat to clear the court room upon the following day and the request for the Sheriff to keep order was not sufficient for the purpose.

This was prejudicial to the defendant because the laughter was directly in derision of the defendant's defense being made by his counsel.

39. Because the Court permitted, at the instance of the Solicitor, the witness Britton Klein to testify, over the objection of the defendant made when the evidence was offered that the same was immaterial, as follows:

"When the witness Conley was brought to the jail Mr. Roberts came to the cell and wanted Frank to see Conley. I sent word through Mr. Roberts that Frank didn't care to see him. Mr. Frank knew that the detectives were down there and afterwards they brought Conley up there and of course Mr. Frank knew he was there. I knew and Mr. Frank knew he was there. Mr. Frank was at once side and I acted as spokesman. Mr. Frank would not see any of the city detectives. Frank gave as his reason for refusing to see Conley with the detectives that he would see him only with the consent of Mr. Rosser, his attorney. I do not know whether Mr. Frank sent and got Mr. Rooser or not. I told the detectives about sanding and getting Mr. Rosser's consent. I think Mr. Goldstein was there and Scott and Black and a half dozen detectives, a whole bunch of them. I was there only once when Conley was there, that was the time when Conley sworn he wrote the notes on Friday. When Conley came up there with the detectives, Frank's manner, bearing and deportment were natural. He considered Conley in the same light he considered any other of the city detectives. I know that because I conferred with him about it and he said he would not see any of the City detectives without the consent of Mr. Rosser; he considered Scott as working for the City at that time. I sent word that he would not receive any of the city detectives, Black or anyone of the rest of them. Frank considered Scott with the rest of them, including him with the city detectives. He would not see anyone of the city detectives and that included Scott. Frank did not tell me, that the inference was mine. Frank merely said he would receive none of the city detectives without Mr. Rosser's consent, that was the substance of his conversation. Mr. Roberts came up and announced the city detectives; this was at Frank's cell in the county jail."

The court permitted this testimony to go to the jury over the objections made as above stated, and in doing so committed

This was especially prejudicial to the defendant, because the solicitor, in his argument to the jury stressed and urged upon the jury that this failure of the defendant to, as he expressed it, face this negro Conley and the detectives, even in the

absence of his own counsel, was evidence of guilt.

(jj). Because the court permitted Miss Mary Pirk to be asked the following questions and to make the following answers on cross examination made by the Solicitor.

Q. You never heard of a single thing immoral during that five years-- that's true? (Referring to the time she worked at the Pencil Factory)

A. Yes sir, that's true.

Q. You never knew of his (Frank's) being guilty of a thing that was immoral during those five years--is that true?

A. Yes sir.

Q. You never heard a single soul during that time discuss it?

A. No sir.

Q. You never heard of his going in the dressing rooms there of the girls?

A. No sir.

Q. You never heard of his slapping them as he would go by?

A. No sir.

Q. Did you ever see Mr. Frank go back there and take Mary off to one side and talk to her?

A. I never seen it.

Q. That never occurred?

A. I have never seen it.

Q. You never heard about the time that Frank had her off in the corner there, and she was trying to get back to her work?

A. No sir.

Q. You didn't know about that?

A. No sir.

Q. That was not discussed?

A. No sir.

These questions were asked over the objection of the defendant, because even if the Solicitor's questions brought out that the witness had heard charges of immorality against Frank, that her answers there about would have been irrelevant and immaterial in this trial of Frank for murder. The fact that Frank might have been frequently guilty of immorality could not be held against him on a trial for the murder of Mary Phagan. Nor,

could acts of immorality with women be heard, even on cross examination, as evidence of bad character, and reputation, upon Frank's trial for the murder of Mary Phagan.
Lasciviousness is not one of the character traits involved in a case of murder and can not be heard in a murder trial, even when the defendant has put his character in issue.

41. Because the Court permitted the witness W. D. McWorth to testify, at the request of the Solicitor General, over the objection of the defendant made at the time the testimony was offered, that the same was immaterial.

". Mr. Pierce is the head of the Pinkerton office here. I do not know where he is; the last time I saw him was Monday evening, I do not know where Mr. Whitfield is (Mr. Whitfield was also a Pinkerton man) I saw him the last time Monday afternoon. I do not know whether Pierce and Whitfield are in the City or not."

The Court admitted this testimony over the objections of the defendant, made at the time the testimony was offered, for the reasons stated and in so doing committed error. This was especi ally prejudicial to the defendant. Pierce and Whitfield were part of the Pinkertons force in the City of Atlanta, and the inference of the solicitor was that he wished their whereabouts to be shown upon the theory that the Pinkertons were employed by Frank for the National Pencil Company and that a failure on the part of Frank to produce them would be a presumption against him, as he stated it, upon the well-known principle of law that if evidence is shown to be in the possession of a party and not produced, it raises a presumption against them.

42. Because the Court permitted Mc Worth, at the instance of the solicitor general to testify over the objections of the defendant, made when the evidence was offered that the same was irrelevant, immaterial and illegal.

" I reported it (the finding of the club and envelope) to the police force about 17 hours afterwards. After I reported the [illegible] about it about four hours afterwards. I told John Black about the envelope and the club. I turned the envelope and club into the possession of H. B. Perce."

96.

The Court heard this testimony over the objection of the

defendant, made as above stated and in doing so committed error, for the reasons herein stated.

This was prejudicial to the defendant, because the Solicitor General contended that his failure to sooner report the finding of the club and the envelope to the police were circumstances against Frank. These detectives were not employed by Frank, but by Frank for the National Pencil Company, and movant contends that he is not bound by what they did or failed to do.

The Court should have so instructed the jury.

43 (OO) Because the Court permitted the witness Irene Jackson, at the instance of the solicitor General and over the objection of the defendant, that the testimony was irrelevant, immaterial, illegal to testify as follows:

Q."Do you remember having a conversation with Mr. Starnes about something that occurred.

A. Yes sir.

Q. Now what was that dressing room incident that you told him about at that time?

A. I said she was undressing.

Q. Who was undressing?

A. Ermilie Mayfield, and I came in the room, and while I was in there, Mr. Frank came to the door.

Q. Mr. Frank came in the door?

A. Yes sir.

Q. What did he do?

A. He looked and turned around and walked out.

Q. Did Mr. Frank open the door?

A. Yes, he just pushed it open.

Q. Pushed the door open?

A. Yes sir.

Q. And looked in?

A. Yes sir.

Q. And smiled?

A. I don't know whether, I never notice to see whether he smiled or not, he just kind of looked at us and turned around and walked out.

Q. Looked at you, stood there how long?

A. I didn't time him; he just came and looked and turned and walked out.

Q. Came in the dressing room?

A. Just came to the door.

Q. Came into the door of the dressing room?

A. Yes.

Q. How was Miss Ermilie Mayfield dressed at that time?

A. She had off her top dress, and was holding her old dress in her hand to put it on.

Q. Now, you reported that to the forelady there?

A. I did not but Ermilie did.

Q. Now did you talk or not to anybody or hear of anybody except Miss Ermilie Mayfield talking about Mr. Frank going in the dressing room before there when she had some of her clothes off?

A. I have heard remarks but I don't remember who said them, or anything about it?

Q. (By Mr. Rosser) Was that before April 26th?

A. Yes sir.

Q. Well, what was said about Mr. Frank going in the room, the dressing room?

Q. I don't remember.

Q. Well, by whom was it said?

A. I don't remember.

Q. Well, how many girls did you hear talking about it?

A. I don't remember I just remember I heard something about it two or three different times, but I don't remember anything about it, just a few times.

Q. Was that said two or three different times?

A. I said a few times, I said two or three times.

Q. How would the girls--- she said she heard them talking about Mr. Frank going in the dressing room on two or three different occasions--well, you know you heard them discussing about his going in this dressing room on different occasions, two or three different occasions did you?

A. Yes.

Q. That is what you said, wasn't it?

A. Yes sir.

Q. Now when was it that he run in there on Miss Ermilie Mayfield?

A. It was the middle of the week after we had started to work, I don't remember the time.

Q. The middle of the week after you had started to work?

A. Yes sir.

Q. Was that the first time you ever heard of his going in the dressing room, or anybody?

A. Yes,

Q. That was the first time?

A. Yes sir.

Q. Then that was reported to this forelady?

A. Yes sir.

Q. Then when was the second time that you heard he went in there?

A. He went in there when my sister was lying down.

Q. Your sister was lying down, in what kind of position was your sister?

A. She just had her feet up on the table.

Q. Had her feet up on the table?

A. Had them on a stool, I believe, I don't remember.

Q. A table or stool?

A. Yes sir.

Q. Was she undressed or dressed?

A. She was dressed.

Q. She was dressed; do you know how her dress was?

A. No sir, I didn't look.

Q. You don't know that, you were not in there?

A. Yes sir, I was in there, but I didn't look.

Q. Well, now what did Mr. Frank do that time?

A. I didn't pay any attention to it, only he just walked in and turned and walked out, looked at the girls that were sitting in the window, and walked out.

Q. What did the girls say about that?

A. Don't remember.

Q. Did they talk about it at all?

A. There was something said about it, but I don't rmemeber.

Q. Well now, did you or not hear them say that he would go in

that room and stand and stare at them?

A. Yes sir, I have heard something, but I don't remember exactly.

Q. You heard that, how often did you hear that talked?

A. I don't remember.

Q. You don't remember how often you heard them say he walked in there and stood and stared at them?

A. I don't remember.

Q. You don't remember that; well now, you said about three times those things occurred, and you have given us two, Miss Mayfield and yoursister, what was the other occasion?

A. Miss Mamie Kitchens.

Q. Miss Mamie Kitchens?

A. Yes sir.

Q. Mr. Frank walked in the dressing room on Miss Mamie Kitchens?

A. We were in there, she and I.

Q. You were in there and Mr. Frank came in there?

A. Yes sir.

Q. So that was the three times you know of yourself?

A. Yes sir.

Q. Then did you hear it talked of?

A. I have heard it spoken of, but I don't remember.

Q. You have heard them speak of other times when you were not there, is that correct?

A. Yes sir.

Q. How many times when you were not there? That is three times you saw him, how many times did you hear them talk about it when you were not there?

A. I don't remember.

Q. What did they say Mr. Frank did when he could come in that dressing room?

A. I don't remember.

Q. Did he say anything those three times when you were there?

A. No sir.

Q. Was the door closed?

A. It was pushed too, but there was no way to fasten the door.

Q. Pushed to but no way to fasten it?

A. No sir.

Q. He didn't come in the room?

A. He pushed the door open and stood in the door.

Q. Stood in the door, what kind of dressing room was that?

A. It was---just had a mirror in it, you mean to describe the inside?

Q. Just describe it, was it all just one room?

A. Yes sir, and there were a few lockers for the foreladies.

Q. A few lockers around the walls, a place where the girls changed their street dress and got into their working dress, and vice versa?

A. Yes sir.

Q. Now, what else did you ever see that Mr. Frank did except go in the dressing room and stare at the girls?

A. Nothing that I know of.

Q. When Mr. Frank opened the door, there was no way he could tell before he opened the door what condition the girls were in was there?

A. No sir.

A. (by Mr. Arnold) He didn't know they were in there, did he?

A. I don't know.

Q. That was the dressing room and the usual hour for the girls to attend the dressing room, wasn't it?

A. Yes sir.

Q. Undressing and getting ready to go to work?

A. Yes sir.

Q. Changing their street clothes and putting on their working clothes, that is true, Miss Jackson?

A. Yes sir.

Q. That was the usual hour; you had all registered on or not, before you went up into this dressing room?

A. Yes sir.

Q. And Mr. Frank knew the girls would stop there?

A. Yes sir.

Q. After registering?

A. Yes sir.

Q. Now, did you hear or not any talk about Mr. Frank going around and putting his hands on the girls?

A. No sir.

Q. Was that before or after he had run in the dressing room?

A. I don't remember.

Q. Well, he pushed the door open and stood in the door, did he?

A. Stood in the door.

Q. Looked in and smiled?

A. Yes sir.

Q. Ddin't you say that?

A. I don't remember now, he smiled or made some kind of a face which looked like a smile, like smiling at Ermilie Mayfield.

Q. At Ermilie Mayfield, that day she was undressed?

A. But he didn't speak, yes sir.

Q. He didn't say a word, did he?

A. No sir.

Q. Did he say anything about any flirting?

A. Notto us, no sir.

These questions and answers were objected to for the reasona above stated, and for the further reason that a statement showing improper conduct of Frank in going into the dressing rooms with girls, while improper, was intended to create prejudice against him and in no way elucidated the question as to whether he was or was not the murderer of Mary Phagan.

Movant contends that the fact that the defendant had put his character in issue is no reason why reported or actualfacts of immorality should be admitted in evidence over his objection. The defendant's reputation or character for immorality or loose conduct with women are not relevant subjects for consideration in determining whether the defendant has or has not a good character when such good character is considered in connection with a charge for murder.

44. (pp) Because the court permitted the solicitor to ask and have answered by the witness Harris Dorsey the following questions, said questions and answers dealing with an incident occurring at the Pencil Factory, wherein Conley, after having made the third affidavit in the record purported to reenact the occurrence between himself and Frank on April 26th, wherein the body

of Mary Phagan was taken from the office floor to the cellar of the factory;

Q. Now, Mr. Branch, take this stick and that picture, and take up Conley now, and give every move he made?

A. Am I to give you the time he arrived there? (Pencil Factory)

Q. Yes, give the time he arrived.

A. I will have to give that approximately; I was to be there at 12 o'clock, and I was a few minutes late, and Conley hadn't arrived there then, and we waited until they brought him there, which was probably ten or fifteen minutes later, the officers brought Conley into the main entrance here and to the staircase, I don't know where the staircase is here--- yes, here it is, (indicating on diagram) and they carried him up here, and they told him what he was there for, and questioned him, and made him understand that he was to re-enact the pantomime.

Q. Just tell what Conley did?

A. After a few minutes conversation a very brief conversation, Conley led the officers back here and turned off to his left to a place back here, I guess this is it (Indicating on diagram) right where this is near some toilets, and he says:

Q. Go ahead?

A. He was telling his story as he went through there, and he said when he got up there, he went back and he said he found this body back in that place.

Q. Go ahead and tell what he said and did?

Q. He was talking constantly all the time, I don't know how he made out a part of his story.

Q. Go ahead now, and state what Conley did and said as he went through that factory?

A. Well when he got back--After reaching this point at the rear left side of the factory, described the position of the body, as he stated it, he stated the head was lying towards the north and the feet towards the south, as indicated, and there was a [illegible] around the

Q. State what he said, what he said Mr. Frank did and said?

A. He didn't state how long it took for the various movements.

Q. (By the Court) Did you time it?

A. No sir, I know the time I arried there and the time I left the factory.

Q. First, I want you to state what he said he did, and what he said Mr. Frank did, and then come up on the time business?

A. I don't quite understand what I am to do.

Q. Just go ahead and tell what Conley said he said, and what Conley said Mr. Frank said, and show what Conley did the day you were over there, take it up right back here where the body was and go on with it, leaving out, however, what he said about the cord and all that?

A. He said when he found the body, he came up to Mr. Frank, called to him from some point along here, I should judge (indicating on diagram), I don't understand this diagram exactly, and told him the girl was dead, and I don't know just exactly what Mr. Frank said, I will try to eliminate as much of that conversation as I can. Anyhow he said he came on up to where Mr. Frank was, and that he was instructed to go to the cotton room, where he showed us. I don't know, it must be on the same side of the building, about here, I judge, (indicating) and he went in there, he showed us the cotton room, and he said he went back, and he did go back, lead us back, and told about taking up the body, how he brought it on up on his shoulder, and then in front of a little kind of impression of the wall, said he dropped it, and he indicated the place, and then he came up and told Mr. Frank about it, that he would have to come and help him, or something like that, and that Mr. Frank came back and took the feet, I believe, he said, and he took the head, and they brought the body up to the elevator and put it on the elevator.

Q. (By the Court) Was he going through all that thing?

A. Yes sir, he was enacting this all the time, and talking all the time, He. described how the body was put on the elevator, and he said Mr. Frank run the elevator down, and he went on down the elevator.

Q. (By the Court) Did he go down in the elevator?

A. On this trip, yes sir, he went down in the elevator to the basement, and he said Mr. Frank helped to take the body out, and they dropped it there, and Mr. Frank told him to take it up

and carry it back, and he put the body on his shoulder and carried it back to this sawdust which is away back here, and that he came on back and there was somethings in here which he said he threw on this trash pile, and Mr. Frank was up, he said, in the cubby hole, he said, somewhere back there, and later he lead us up there, and that Mr. Frank told him to run the elevator up, so Conley and the officers and the rest of us who were with him came up on the elevator, and when they got to the first floor, just before getting to the first floor, he said this was where Mr. Frank got on the elevator, Mr. Frank was waiting there for him; then they brought the elevator on up to the second floor, and he had them to stop the elevator just, I suppose, a foot, or a little more below the landing, and he said Mr. Frank jumped off when the elevator was about that point, and after getting up, he said Mr. Frank went around the elevator to a sink that he showed us back of the elevator, to wash his hands, and he waited out in front, and he said he shut off the power while Mr. Frank was gone around there, and when Mr. Frank came back they went in the office, and he lead us on in the office through----there is an outer office there, and he come in this way, and come through in this office back there, this inner office, and he indicated Mr. Frank's desk and a desk right behind it, I presume this is the two desks (indicating) that Mr. Frank sat down in the chair at that desk, and he told him to sit at this other desk, and Mr. Frank told him to write some notes, and he was asked by some of the officers to write what Mr. Frank had told him to write, and he sat down there and wrote one note, and I believe--I know he wrote one note, and I don't know whether he wrote one or two, and that Mr. Frank handed him some money and that later he took it back, and I don't remember whether he gave him the cigarettes and money before or after this, I don't recall, Any way, when he was in here, after he had written the notes for the officers, I found it was time for me to get in the office with my copy, he hadn't finished, he was still sitting there, and I telephoned into the office for relief, someone to relieve me, and I went to the office, and I left him there in this office, and I went in.

Q. What time was it when Conley got there?

A. I should judge it was about a quarter past twelve, I didn't look at my watch.

Q. A quarter past twelve, what time did you get there.

A. I must have gotten there five minutes before he did.

Q. Then what time did you leave?

A. I left about one o'clock.

A. What time did he begin?

A. They rushed him right up the steps and probably two or three minutes after he got up there, he began this enactment, and he went very rapidly, in fact, we sort of trot to keep behind him.

Q. You say you did keep behind him, were any questions asked him during that?

A. Constantly, yes sir.

Q. How many people were asking him questions.

A. Well, I suppose four or five of the officers.

Q. How much of the talking that Conley did have you cut out?

A. Well, I have cut out a good deal, I have no way of indicating how much.

Q. Well did he do or not more talking than you have stated.

A. Agreat deal more.

Q. A great deal more? How much more would you say.

A. I have no way of estimating, he was talking constantly, except when he was interrupted by questions.

Q. Now, Mr. Branch, do you know the amount of time that Conley spent in this? First, you say you got there at a quarter past twelve, did you.

A. I didn't time it, but it must have been, because I was endeavoring to get there at twelve o'clock, and when I got to the office from police station, it was five or ten minutes after twelve, and I walked down just about a block and a half.

Q. And Conley got there at what time?

A. He came just, I should say, five minutes after I did, not longer than five minutes.

Q. Not longer than that, and he got there at 12:30, then, and what time did you go away?

A. I left a little after one.

Q. How much after one?

A. I do not know, probably five or ten minutes.

Q. One-ten then, now, how much of the time during that time you were there did it take Conley to act what he acted, leaving out the conversation he had with the different men?

A. That would be a difficult thing for me to estimate, while he was acting, he was acting very rapidly, he kept us on the run.

Q. All right, now, leave out now the time that it took this man to answer the questions that were put to him by yourself and other men that accompanied him through there, leave that out now and give us ycur best opinion as to how long it took Conley to go through that demonstration?

A. There was no way to do that, there was no way to disassociate the time, and find out the difference between the two, between the time he was acting and talking; I didn't attempt to do that; in fact, the only time I was interested in was the time I would have to get back to the office.

Q. You got to the office, you say about 1:10?

A. Yes sir.

Q. What time then, you say, about, you left the Pencil Factory ?

A. I left the Pencil Factory between five and ten minutes after one.

Q. You left the Pencil Factory then at about 1:10?

A. Yes, between 1:05 and 1:10

The defendant objected to this testimony, because(a) this so-called experiment made with Conley was solely an effort upon his part to justify his story, (b) the sayings and acts of Conley, testified about as aforesaid were the sayings and acts of Conley, not under oath, had and made without the right of cross examination, the net result of which is but a reptition of Conley's story to the jury, without the sanction of an oath, and without [illegible] Conley immediately after making his last affidavit; that that last affidavit is not the way he tells the story on the stand; that he tells it wholly differently on the stand: at least differently in many particulars, that it cannot help the jury for Conley

to go and illustrate that affidavit when he says now on the stand that much of it was a lie, and that it did not happen that way at all; that this evidence was of another transaction, not binding on this defendant.

45. Because the Court declined to allow Dr. David Marx to give testimony in behalf of the defendant as to the character of the Jewish organization known as B'Nai Brith. Defendant's counsel stated at the time that Dr. Marx would testify that while the B'Nai Brith was an international Jewish charitable organization, its charity did not extend to giving aid to persons charged with a violation of the criminal law, as was Mr. Frank in this case.

The State objected to permitting Dr. Marx to make the answer sought, and the Court declined to permit the testimony to go to the jury.

46. Because the Court permitted the witness Mrs. J. J. Wardlaw, who before her marriage was Miss Lula McDonal, to be asked by the solicitor General the following questions and to make the following answers:

Q. You never knew of his improper relations with any of the girls at the factory?

A. No, sir.

Q. Now, did you ever, do you know or did you ever hear of a girl who went with Mr. Frank on a street car to Hapeville the Saturday before Mary Phagan was murdered?

A. No sir.

Q. On the same street car with Hermes Stanton and H. M. Baker and G. S. Adams.?

A. No sir.

Q. And about his putting his arm around her and trying to get her at various places to get off with him?

A. No sir.

Q. And go to the woods with him?

A. No sir.

Q. She was a little girl that got on at the corner of Forsyth and Hunter st[illegible] where the car passes?

A. No, I don't know that.

Q. You never heard of it at all?

A. No sir.

Q. The Saturday before?

A. No sir.

Q. You say you have never heard of any act of immorality on the part of Mr. Frank prior to April 26, 1913?

A. No sir, I did not.

Q. You never talked with Hermes Stanton or H. M. Baker, the conductor or motorman?

Q. I will put it that way then you never heard that, the Saturday before little Mary Phagan met her death, Mr. Frank went out on the Hapeville car on which Hermes Stanton and H. M. Baker were in charge, and that he had his arm around the little girl, and that he endeavored at various places to get that little girl to get off the car and go to the woods with him?

A. No sir.

Q. You never heard such a statement as that at all by anybody?

A. No sir, I did not.

The defendant objected to the above questions made by the solicitor General, because while the witness denied any knowledge by hearsay or otherwise of the wrong asked about, the mere asking of such questions, the answers to which must have been irrelevant and predjudicial was harmful to the defendant, and the court erred in permitting such questions to be asked, no matter what the answers were.

The court further erred because, although the defendant had put his character in issue, the state could not reply by proof or reputation of improper or immoral conduct with women. The reputation for lasciviousness is not involved in that general character that is material where the charge is murder.

47. (ss). Because the court permitted the witness W. E. Turner at the instance of the Solicitor and over the objection of the defendant made at the time the evidence was offered that same was irrelevant, immaterial and dealt with other matters than the issues involved, to testify:

" I saw Frank talking to Mary Phagan on the second floor of the factory about the middle of March. Frank was talking to her in the back part of the building. It was just before dinner I don't know whether anybody was in the room besides Mr. Frank and Mary. After I went in there two young ladies came down and

showed me where to put the pencils. Nobody was in there but Mr. Frank and Mary at the time I went in there. Mary was going to her work when Mr. Frank stopped to talk to her. Mary told him that she had to go to work. Mr. Frank was talking about he was the Superintendent of the pencil factory. He told her that he was the Superintendent of the pencil factory and that he wanted to speak to her and she told him she had to go to work and I never did hear any more replies from either one. I left just when she told him that she had to go to work. Mary backed off and Frank went on towards her talking to her. That was before I left, was when she backed off, and the last words I heard him say was he wanted to talk to her. Mary did not stand still, she moved backward about 3-1/3 feet. While she was going backwards, Mr. Frank was talking to her and walking towards her. Mr. Frank said 'I am the Superintendent of the pencil factory and I want to speak to you' and Mary said, "I have got to go to work."

The court over the objections made as is above stated, permitted this testimony to go before the jury and in so doing committed error, for the reasons above stated.

This was prejudicial to the defendant, because the transaction testified about was a transaction distinct from those making the issues in the present case, threw no light on that trial and tended to prejudice the jury against Frank upon the theory that he was seeking to be intimate with this little girl.

48. Because the Court erred in admitting to the jury, over the objection of defendant's counsel, made at the time the evidence was offered that the same was irrelevant, immaterial, dealt with collateral matters to the confusion of the issues on trial, the following extracts from the minutes of the Board of Health of the State of Georgia:

" The president then addressed the Board at length on his reasons for thinking that the Secretary should be requested to resign, the subjects dealt with being too enormous and too lengthy to be included here in their entirety. After the President's address, the Board adjourned and reassembled again at four o'clock in the afternoon at which time Dr. Harris' side of the controversy was heard." 110.

"The President (of the Board Dr. Westmoreland) then addressed the Board at length on his reasons for thinking that the Secretary should be requested to resign the subjects dealt with being too numerous and too lengthy to be included here in their entirely. After the President's address, the Board adjourned and reassembled again at four O'clock in the afternoon, at which time Dr. Harris' side of the controversy was heard."

" The Secretary not having been present at what transpired following this was not in a position to take note as to the proceeding, but was informed by the members on adjournment that it was their wish that he should still continue as Secretary and Director of the Laboratory."

"The President then made a short statement in support of his protest against the Secretary, and reiterated some of the charges made at the previous meeting, and in addition, made objection against the Secretary's action in sending out antitoxine No. 64, which had been shown by tests made in Washington to be of less potency than it was originally labelled and also condemning the Secretary for replacing Dr. Paullin and personally taking up the investigation of the malarial epidemic around the pond of the Central of Georgia Power Company. The President then stated that he would publish the charges against the Secretary if the board did not take such action regarding them as he thought right and proper. At the conclusion of the President's address, a talk was made by Mr. Daughty, in which he took exception to the former's attitude, and insisted--"

" At the conclusion of the President's address a talk was made by Mr. Doughty, in which he took exception to the former's attitude, and insisted that every member of the Board wished to do what was best for the State Board of Health and the people of Georgia, and that everyone connected with the Board of Health should be willing to bow to the decision of this body. He deprecated strongly the idea of giving to the press charges the publication of which could do no good. and which could only result in harm".

" On the President and Secretary being recalled an hour later, the President pro tem. Dr. Benedict, read the following resolu-

tion, which had been unanimously adopted by the Board on motion of Dr. Harbin, seconded by Dr. Brown:---the resolution having been drawn by a committee appointed by the Board, consisting of Drs. Benedict, Taylor and Doughty."

" That the committe appointed to frame a resolution expressing the opinion of the Board with regard to the charges preferred against the Secretary by the President of the Board in a report to the Governor, and upon which they are called upon to act., beg to report as follows:

" Resolved: That the members of the Board present after carefully considering the charges and all evidence in its possession, unanimously agree that while there have been certain slight irregularities in the conduct of some departments of the laboratories of the State Board of Health, which should be corrected, these irregularities have not been so important in character or result as to call for or warrant the discontinuance of Dr. Harris as Secretary and director of laboratories as demanded by the President. The Board further directs that a copy of this resolution be transmitted to the Governor.

Following the reading of this resolution, Dr. Westmoreland tendered his resignation as President of the Board, a copy of which follows:

Atlanta, Ga. Sept., 25th, 1911.

To the Members of the Georgia State Board of Health: Atlanta, Ga., Gentlemen:- I hereby tender you my resignation to take eff ect at this meeting. Thanking you for the courtesies extended me, and for the honor conferred on me in the past, I am, Very sincerely yours. W. F. Westmoreland, President."

"Now on page 164 and 165: that is the letter to the Governor, adopted by the Board, and sent to his Excellency, John M. Slaton Governor, Atlanta, Ga. "

The Court admitted these extracts from the minutes over the objections of defendant, as above stated, and in so doing committed error for said reasons.

This was prejudicial to the defendant and took the minds of the jury from the issues on the trial and centered them upon a medical row had between Dr. Westmoreland who had once been

President of the State Board of Health and Dr. Harris who had been and was its Secretary. This row between the doctors stated is utterly immaterial and irrelevant and was harmful to the defendant because it tended to discredit the testimony of Dr. Westmoreland who resigned from the Board and to sustain the testimony of Dr. Harris who remained as Secretary of the Board after Dr. Westmoreland's resignation.

-49. Because the court permitted the witness E. H. Pickett to testify over the objection made when the testimony was offered that it was wholly and entirely irrelevant, immaterial incompetent, illegal dealt with transactions between other parties, threw no light on the issues involved and did not bind the defendant, to testify:

"Minola McKnight at first denied that she had been warned by Mrs. Selig when she left to go to the solicitor's office on May 3rd not to talk about the case, that when asked she stated that she was on that date instructed not to talk. At first, Minola said her wages had not been changed by the Seligs, that she was receiving the same wages as before the crime. At first she said her wages hadn't been changed and then she said her wages had been raised, just what I can't remember because it varied from one week to another; she said the Selig family had raised her wages. The only statement she made about Mrs. Frank giving her a hat was when she made the affidavit, we didn't know anything about the hat before."

The Court permitted this testimony to go to the jury over the objections above stated and therein erred. The Court stated that he admitted this testimony on the idea that the ground of impeachment for Minola McKnight had been laid.

This testimony was prejudicial to the defendant, because the Court in admitting it, left the jury to consider the statements of Minola McKnight, that Mrs Selig had instructed her not to talk, that the Seligs since the crime had raised her wages; that Mrs. Frank had given her a hat.

50. Because the court permitted the witness J. H. Hendricks to testify, at the instance of the solicitor and over the objection of the defendant that the same was irrelevant, incompetent and immaterial, that;

". I am a motorman for the Georgia Railway and Power Company, running on April 26, 1913, on Marietta to Stock Yards and Decatur street car. The Cooper and English Ave., run is on the same route from Broad and Marietta Street to Jones Ave., Prior to April 26, 1913, the English Ave. car with Mathes and Hollis on it did run to Broad and Marietta streets ahead of time, how much ahead I cannot say positively. About April 26th and subsequent thereto Mathes and Hollis, in charge of the English Ave car, about twelve o'clock when they were due to get off at dinner did come in ahead of time. I have seen them two or three minutes ahead of time. At the time they were relieved, I got to Broad and Marietta Streets about 12:06. When I would get there on schedule time, I don't know where Mathes and Hollis were, they should have been coming in. When Hollis would be at the corner of Broad and Marietta Streets, and his car would not be there, and my car would be on time, Hollis would leave Broad and Marietta street for dinner on my car."

The Court permitted this testimony to go to the jury over the objections above stated and in doing so committed error for the reasons stated. Movant contends that this was prejudicial to the defendant because it was a material matter to determine at what time his car got to Marietta and Broad Streets on the day of the murder, and it confused and mislead the jury to hear testimony as to when he got there upon days other than the day of the murder.

51. Because the court permitted the witness J. C. McEwen, at the instance of and over the objection of defendant that the same was immaterial, incompetent and irrelevant, to testify: "I am a street car motorman, previous to April 26th I ran on the Cooper street route something like two years. On April 26th, 1913 I was running on Marietta and Decatur Streets. The Cooper street car or English Ave., car run by Hollis and Mathis was due in town at seven minutes after the hour; the car I was running was due at 12:10. The White City car got into the center of town at five minutes after the hour. About April 26, 1913, the Cooper Street car or English Ave., car frequently cut off the White City car due in town at 12:05. The White City car is due there before the English Ave., car, it is due five minutes after

the hour and the Cooper Street car is due seven minutes after the hour. In order for the English Ave., car to cut off the White City car, the Cooper Street car would have to be ahead of time, that is the English Avenue car would have to be ahead of time. If the White City car was on time at 12:05, the English Ave, car would have to get there before that time to cut it off. That happens quite often. I do know that the car that Mathis and Hollis were running did come into town ahead of time very often, especially if it is on a relief trip. I have known it to be four or five minutes ahead of time."

The Court admitted this testimony over the objections above made and in doing so committed error for said reasons. This was prejudicial to the defendant, because it was material to his defense to show, as sworn to by the conductor and motorman that the English Ave. car reached the corner of Broad and Marietta, Streets at 12;07 and it mislead the jury to admit evidence tending to show that at other times this same car run by Mathis and Hollis reached the City ahead of time. Nor would it be material for the purpose of contradicting the motorman who swore that he did not run ahead of time any time for whether he run ahead of time at other times would be immaterial, and a witness can be impeached only as to misstatements of fact material to the issues in the case.

52. Because the Court permitted, at the instance of the solicitor and over the objection of the defendant, made when the evidence was offered that same was irrelevant, immaterial and incompetent, the witness Henry Hoffman, to testify as follows:

" I am an Inspector for the Georgia Railway and Power Co., I know Mathis, the motorman who runs on the English Ave. car, He is under me a part of the day. He was under me on April 26th, from 11:30 A. M. to 12;07 P. M. Under the schedule, his car is due at the junction of Broad and Marietta Sts., at 12;07. Prior to the beginning of this trial, I have known Mathis car to cut off the Fair Street car. Under the schedule for the Fair St. car, it arrives in the center of town, junction of Broad and Marietta at 12;05. At the time Mathis was running ahead of this

Fair Street car which is due at 12;05 at the junction of Marietta and Broad Sts., the Fair street car would be on its schedule. I have compared my watch with Mathis' watch prior to April 26th, There was at times a difference of from 20 to 35 or 40 seconds. We are both supposed to carry the right time. When I compared my watch with Mathis' I suspect mine was correct, as I just had left it the day I looked at Mathis' watch, and mine was 20 seconds difference and I had gotten mine from Fred Williams that day. His watch was supposed to compare with the one at the barn. I called Mathis' attention to running ahead of time once or twice that I know of. Men coming in on relief time at supper and dinner, coming to the junction of Broad and Marietta, customarily come in ahead of time."

The Court admitted this testimony over the objections above made, and in doing so committed error for said reasons. This was prejudicial to the defendant, because it was material to his defense to show, as sworn to by the conductor and motorman that the English Ave., car reached the corner of Broad and Marietta Sts., at 12;07, and it mislead the jury to admit evidence tending to show that at other times this same car run by Mathis and Hollis reached the city ahead of time.

Nor would it be material for the purpose of contradicting the motorman who swore that he did not run ahead of time any time, for whether he ran ahead of time at other times would be immaterial, and a witness can be impeached only as to misstatements of fact, material to the issues in the case.

53. Because the Court permitted the witness J. W. Gantt, over the objection of the defendant, made when the evidence was offered that the same was irrelevant and immaterial, to testify substantially as follows:

" The clocks of the pencil company were not accurate. They may vary all the way from three to five minutes in 24 hours."

The Court admitted this testimony over the objections made and in doing so committed error, for the reasons stated.

This was prejudicial to the defendant, because whether the clocks were or were not accurate on April 26th, was material to his defense. The witness Gantt had not worked at the factory for

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three weeks and the fact that the clocks were not keeping accurate time three weeks before the trial was immaterial, and the evidence thereon tended to mislead and confuse the jury. Gantt had not worked at the factory during the three weeks just prior to the crime, and his testimony as to the clocks related to the time he did work at the factory.

54. Because the Court permitted the witness Scott to testify in behalf of his Agency, over the objection of the defendant, that the same was irrelevant, immaterial and incompetent, substantially as follows:

" I got hold of the information about Conley knowing how to write through my operatives that I had investigating while I was out of town. McWorth told me in person when I returned."

The Court permitted this testimony over the defendant's objections as above stated, and in doing so committed error. This was prejudicial to the defendant, because the solicitor contended that the failure of Frank to report the fact that Conley could write, was a circumstance against Frank's innocence, and he sought to show by the above testimony that the detectives were forced to get that information from someone other than Frank.

55. Because the Court permitted the witness L. T. Kendrick over the objection of the defendant, made at the time the evidence was offered that the same was irrelevant, immaterial and incompetent, to testify substantially as follows:

" The clock at the pencil factory, when I worked there, needed setting about every 24 hours. You would have to change it from about three to five minutes, I reckon."

The Court permitted this testimony to be heard over the above stated objections of the defendant, and in doing so committed error Kendricks had not worked at the factory for months and whether or not the clock was correct at that time was immaterial and tended to confuse the jury in their effort to determine whether or not the clock was accurate upon the date of the tragedy.

56. Because the Court over the objection of the defendant made at the time the evidence was offered that the same was irrelevant, immaterial, incompetent, illegal and prejudicial to the defendant, permitted the witnesses, Miss Maggie Griffin, Miss

Myrtie Cato, Mrs. C. D. Donagan, Mrs. H. R. Johnson, Miss Marie Karst, Miss Nellie Petts, Miss Mary Davis, Mrs. Mary E. Wallace, Miss Carrie Smith and Miss Estelle Winkle to testify that they were acquainted with the general character of Leo M. Frank prior to April 26, 1913, with reference to lasciviousness and his relations to women and girls and that it was bad.

The Court admitted this evidence over the objections above stated, and in doing so erred for the reasons herein stated.

In determining general character in cases of murder, lasciviousness or misconduct with women is not one of the traits of character involved. The traits of character involved are peaceableness, gentleness, kindness, and it is utterly immaterial to prove bad character for lasciviousness in a murder trial.

To permit this evidence was highly prejudicial to the defendant. It attacked his moral character and while such attack would not tend to convict him of murder nor show him a person of such character as would likely commit murder, its introduction prejudiced the jury against him.

57. Because the Court permitted the witness Miss Dewie Hewell, over the objection of the defendant that the same was irrelevant, immaterial, incompetent, illegal and dealt with separate and distinct matters and issues from this case, to testify:

". I am now staying in the Station House. Before I came to Atlanta to testify I was in Cincinnati, Ohio, in the Home of the Good Shepard. I worked at the Pencil Company during February and March, 1913, I quit there in March. I worked on the fourth floor and worked in the metal room, too. I have seen Mr. Frank hold his hand on Mary's shoulder. He would stand pretty close to Mary when he would talk to her, he would lean over in her face."

The Court permitted this testimony over the objection of the defendant, made as is above stated, and in doing so committed error This was prejudicial to the defendant, because it was introduced to show an effort to be criminally intimate with Mary and inflamed and mislead the jury.

58. Because the Court permitted the witness, MissCato, over the objection of the defendant that the same was incompetent, illegal and immaterial, to testify substantially as follows:

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" I know Miss Rebecca Carson, I have seen her go twice into the private ladies dressing room with Leo M. Frank."

The Court permitted this testimony over the objection of the defendant made as is aforesaid and in doing so committed error.

The Court stated that this evidence was admitted to dispute the witness they had called.

It was wholly immaterial to the issues involved in this case whether Frank did or did not go into a private dressing room with Miss Carson. It did, however, prejudice the jury as indicating Frank's immorality with reference to women.

59. Because the Court erred in permitting the witness Maggie Griffin to testify over the objection of the defendant made when the testimony was offered that the same was immaterial, illegal, and incompetent, to testify substantially as follows:

" I have seen Miss Rebecca Carson go into the ladies dressing room on the fourth floor with Leo M. Frank. Sometimes it was in the evening and sometimes in the morning during working hours. I saw them come in and saw them come out during working hours."

The Court permitted this testimony to go to the jury over the objection of the defendant made as is aforesaid and in doing so committed error. The Court stated that this evidence was admitted to dispute the witnesses they had called.

It was wholly immaterial to the issues involved in this case whether Frank did or did not go into a private dressing room with Miss Carson. It did, however, prejudice the jury as indicating Frank's immorality with reference to women.

60. Because the Court refused to give the following pertinent legal charge in the language requested:

"The jury are instructed that if under the evidence they believe the theory that another person committed this crime is just as reasonable and just as likely to have occurred as the theory that this defendant committed the crime, that then the evidence would not in a legal sense have excluded every other reasonable hypothesis than that of the prisoner's guilt and you should acquit him".

This request was submitted in writing and was handed to the

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Court before the jury had retired to consider of their verdict and before the Court began his charge to the jury.

This request was a legal and pertinent one, particularly adjusted to the facts of the case and should have been given, and the Court in declining to give it committed error, although the general principle involved might have been given in the original charge.

61. Because the Court refused to give the following pertinent legal charge in the language requested:

" If the jury believe from the evidence that the theory or hypothesis that James Conley may have committed this crime is just as reasonable as the theory that the defendant may have committed this crime, then, under the law, it would be your duty to acquit the defendant."

This request was submitted in writing and was handed to the Court before the jury had retired to consider of their verdict and before the Court began his charge to the Jury.

This request was a legal and pertinent one, particularly adjusted to the facts of the case and should have been given, and the Court indeclining to give it committed error, although the general principle involved might have been given in the original charge.

62. Because the Court refused to give the following pertinent legal charge in the language requested:

" The jury are instructed that in all cases the burden of proof is upon the State. The State only half carries that burden when it establishes a hypothesis of guilt, but also leaves a hypothesis of innocence. If both theories are consistent with the proved facts, the very uncertainty as to which is correct requires that the jury shall give the benefit of the doubt to the defendant. But when the defendant relies upon circumstancial evidence, he is not obliged to remove the doubt. It is sufficient if he create a reasonable doubt. He is not obliged to prove his innocence. He may rely upon the failure of the State to establish his guilt. If the proved facts in the case establish a hypothesis consistent with the defendant's innocence and sufficient to create a reasonable doubt of his guilt,

this is sufficient to acquit him and it is not necessary that he should go further in his proof and exclude every possible idea of his guilt. No such burden is upon the defendant".

This request was submitted in writing and was handed to the court before the jury had retired to consider of their verdict and before the court began his charge to the jury.

This request was a legal and pertinent one, particularly adjusted to the facts of the case and should have been given, and the court in declining to give it committed error, although the general principle involved may have been given in the original charge

63. (jjj). Because the court declined to give the following pertinent legal charge in the language requested:

" No presumption can arise against the defendant, because of failure to cross examine any witnesses put up by the State, that the defendant was guilty of any particular acts of wrong doing. You should not, therefore, consider that this defendant because of such failure to cross examine any state's witnesses, has been guilty of any particular acts of wrong doing".

The above request was submitted to the court in writing before the jury retired to consider their verdict and before the charge was given to the jury.

The above is a correct statement of the law and applicable to the present issue, and the court erred in declining to give it.

The failure to give it was predjudicial to the defendant, for the reason that quite a number of character witnesses were introduced by the state and not cross examined by the defendant. The solicitor urged before the jury that this failure to cross examine was evidence of the fact that a cross examination would have brought out particular acts of wrong doing which would have affected the defendant's character.

64. (kkk)Because the court erred in declining to grant a mis - trial on motion of the defendant made by his counsel made after the argument of the Solicitor and before the charge of the court. The Motion made by defendant for a mistrial is as follows.

". I have a motion to make, Your Honor, for a mistrial in this case, and I wish to state the facts on which I base it,

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and I wish the stenographer to take it down, and we propose to prove every fact stated in the motion unless the Court will state that he knows the facts and will take cognizance of them without proof.

First, that counsel requested before this trial began that the court room he cleared of spectators.

Second, when the Court declined to rule out the evidence as to the other alleged transactions with women, by Jim Conley, the audience in the court room, who occupied nearly every seat, showed applause by the clapping of hands and stamping of feet and shouting in the presence of the Court; the jury was in a room not over twenty feet from the court room--that room back there (indicating), and heard the applause. The Court refused to declare a mistrial or to clear the court room on motion of the defendant.

Third, that on Friday, August 22nd, when the trial was on and the court had just adjourned for the day, and the jury was about 200 feet from the court house proceeding north on Pryor street, as Mr. Dorsey, the Solicitor General, was leaving the court house, a large crowd assembled in front of the court house and, in the hearing of the jury, cheered and shouted "Hurrah for Dorsey" in the hearing of the jury.

Fourth, That on Saturday, August 23, 1913, while the trial was still on, and when the court adjourned and Mr. Dorsey emerged from the court room, a large crowd, standing on the street, applauded and cheered Mr. Dorsey, shouting "Hurrah for Dorsey", The jury at this time was in a cafe at lunch, about 100 feet away, and a portion of the crowd moved up in front of the cafe at which they jury were at lunch, and in the hearing of the jury shouted "Hurrah for Dorsey."

Fifth, on the last day of the trial, a large crowd, including many women, had assembled in the court room before court opened, taking up every seat in the court room. The jury were in their room not over 20 feet from the court room, and as Mr. Dorsey entered the room, the crowd applauded loudly by clapping of hands and stamping of feet, all in the hearing of the jury.

The court admonished the people that if the applause was repeated, he would clear the court room.

Now, we move upon those facts, which tend to coerce and intimidate and unduly influence this jury, that the court here and now declare a mistrial, and we stand ready to prove each and every fact there and we offer to prove them. Now, if your Honor will take cognizance of those facts as stated, then, of course it will dispense with proof. If your Honor does not take cognizance of them, we are ready to prove them by numbers of people who heard them, including myself; I have heard it, all of it, and the conduct has been most disgraceful. The defendant has not been accorded anything like a fair trial and I am disgusted, may it please Your Honor, with the unfairness of those members of the public who make such an exhibition of themselves when a man is on trial for his life. I am not afraid of them. I hope nobody else is afraid of them, but the natural tendency is to intimidate a jury, tocoerce a jury, and I have never seen a trial so hedged in and surrounded with manifestations of public opinion. I make the motion to declare a mistrial and stand ready to prove these facts. If the court knows them, the court can take cognizance of them.

Upon this motion the court stated that as to part of the facts he knew and part he did not know. that what occurred on August 25, 1913, the last day of the trial, he did know, as it took place in his presance; that he did hear cheering when Mr. Dorsey went out on the occasion mentioned, but as to what the crowd said, outside of the whooping and holloing, he did not know, and that he did hear the applause in the court room when the court declined to rule out the evidence as to several alleged transactions with women, by Jim Conley.

In support of this motion to declare a mistrial, the following evidence was introduced:

Mr. Deavours testified that he was a Deputy Sheriff of [illegible] in charge of the jury on Saturday when Mr. Dorsey was applauded in front of the court house as he left that house.

When the applauding begun, the jury was in or near the German Cafe, where they went to dinner. When the applause first begun,

they were about 100 feet from the court house, entering the Cafe. That he heard the applause but did not hear the crowd hollo "Hurrah for Dorsey: he heard the holloing and cheering and the jury could have heard what he did. That the applause he heard was outside of the Cafe, he did not hear the cheering from the inside of the Cafe. That he did not remember how many people came up in front of the Cafe. No one came in the Cafe into the room where the jury was, that is in the room in the rear.

Mr. Arnold testified: I wish to state that on Friday when court adjourned Mr. Dorsey left the court room and as he left the court room and as he left I heard loud cheering at the front. On Saturday, when court adjourned, I asked Mr. Dorsey not to go out until the jury had gotten away from where they could hear the noise of the crowd, for fear they should cheer him again as he left the court room. Mr. Dorsey said all right, and remained in the court room for a while. Finally, I thought the crowd had left, and I presume Mr. Dorsey thoughtthe crowd had left, and of course I do not claim that he is responsible for the cheering, but he finally left the court room and went out, and I went out with Mr. Rosser shortly afterwards, behind him. As Mr. Deavers says, it turned out that jury had not at that time entered the German Cafe, although I didn't see them. I saw people up there but I didn't know who they were, but as Mr. Dorsey left the court room there were loud and excited cheers and cries of "Hurrah for Dorsey". My judgment is that you could have heard the cheers and cries of "Hurrah for Dorsey" without any trouble, all the way from the court house up Alabama street; that is my opinion. They kept cheering him and as my friend went across the street the cries continued until he got clear into the Kiser Building. The first cheering was on Friday afternoon, but the second time was on Saturday when I asked Mr. Dorsey not to go out. I asked Mr. Dorsey not to go out until the crowd dispersed. He stayed in; I am not [illegible] for it. I didn't know the crowd was waiting out there, and I presumed the jury had gotten out of hearing but found they had not. I didn't hear the case mentioned; I heard no allusion to this case but I just heard cries of Hurrah for Dorsey, but on the other occasions--while I

love for my friend to meet all the approbation that he may get from the public, I did think that it was an outrage, the crying and shouting; that is what I thought. If the jury were where Mr. Deavours said they were, they could hear; no trouble about hearing it, if they had good ordinary hearing. On Friday I was in the court room when I heard most of the crying, I do not know where the jury was then.

Charles F. Huber, testified. I was in charge of the jury when they left the court room Friday afternoon. I do not know how far the jury had gotten before the crowd began cheering in front of the court house. I didn't know myself that they had cheered, until the next morning. They didn't know it at all. I had charge of the rear end of the jury. I have good hearing and I heard no cheering.

After the introduction of this testimony, Mr. Arnold for the defense stated that he desired time to examine Mr. Pennington and Mr. Liddell, the other two bailiffs in charge of the jury, who were then absent and asked the court to give him time to make the proof.

After the hearing of this request and the above evidence, the Court ruled: "Well, I am going to charge this jury on this case, and I will give you an opportunity, don't you understand, after wards, to complete your showing about that, but I will overrule the motion".

During the hearing of this motion for a mistrial and when the witness Charles F. Huber was on the stand and swore that he heard no cheering on the Friday afternoon referred to, and that the jury did not hear it, there was applause among the spectators, on account of the statement that the jury did not hear the cheering. Mr. Arnold called attention to the applause, stating to the court that the crowd could not be held in even while they were making this investigation.

The Court paid no further attention to this applause than to ask "what is the matter with you over there?"

In failing to grant the mistrial requested, the Court erred. The motion, taken in connection with the admitted and proven

facts, movant contends, clearly show that the defendant was not having a fair trial by reason of the great excitement of the crowd. The court room was in an exceedingly small building, on the ground floor, and was crowded during the whole of the trial and defendant contends that this prejudice and animosity of the crowd against him, as shown by the frequent applause, necessarily reached the jury box and prevented him from having a fair trial.

As permitted by the Court, in his order just aforesaid, we attach hereto in support of this motion for new trial the affidavits hereto attached, marked Exhibit J to AA, both inclusive, and said Exhibits are hereby made a part of this motion for new trial.

65. Because the defendant contends he did not have a fair and impartial trial, by an impartial jury, as provided by the Constitution and laws of this State for the following reasons, to-wit:

(a). On August 6, 1913, during the trial, the defendant's counsel moved to rule out the testimony of the witness Conley tending to show acts of perversion and acts of immorality on the part of the defendant, wholly disconnected with and disassociated from this crime. The Court declined to rule out said testimony and immediately upon the statement of the Court that he would let such testimony remain in evidence before the jury there was instant, pronounced and continuous applause throughout the crowded court room where the trial was being had, by clapping of hands and by striking of feet upon the floor.

While the jury was not then in the same room where the trial was being had, they were in a room about 50 feet from where the judge was sitting and about 30 feet from portions of the crowd applauding, and so close that perhaps the jury could have heard the applauding.

(b). And again during the trial, Mr. Arnold, one of the counsel for the defendant, in the presence of the jury, objected to a question asked by the solicitor, and the following colloquy took place.

Mr. Arnold: I object to that, your Honor, that is entering the orders on that book merely; that is not the question he is asking now at all.

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The Court: What is the question he is asking now?

(Referring to questions asked by the Solicitor General).

Mr. Arnold: He is asking how long it took to do all this work connected with it. (Referring to work done by Frank the day of the murder.)

The Court: Well, he knows what he is asking him. (Referring to the Solicitor General.)

Upon this suggestion of the court that the solicitor knew what he was doing, the spectators in the court room applauded by striking their hands together and by the striking of feet upon the floor, creating quite a demonstration Defendant's counsel complained of the conduct of the spectators in the court-room. The court gave no relief except directing the Sheriff to find out who was making the noise.

(c). During the examination by Mr. Arnold, counsel for the defendant, of V. H. Kreigshaber, a witness for the defendant, there was laughter in the audience sufficiently generally distributed throughout the audience and loud enough to interfere with the examination. Mr. Arnold called the Court's attention to the interruption for the purpose of obtaining some action from the Court thereon.

The Court stated that if there was other disorder, no one would be permitted in the court room the following day and requested the Sheriff to maintain order.

(d). That during the trial, on Friday, August 22nd, 1913, when the court had just adjourned for the day, and the jury was about 200 feet away from the court house proceeding north on Pryor street, as Mr. Dorsey, the Solicitor General, was leaving the court room, a large crowd assembled in front of the Court house, and in the hearing of the jury cheered and shouted "Hurrah for Dorsey."

(e). That during the trial, on Saturday, August 23, 1913, when court adjourned and Mr. Dorsey emerged from the court room, a large crowd, standing on the street, applauded and cheered him, shouting "Hurrah for Dorsey". At that time the jury was between the court house and what is known as the German Cafe and near enough to the crowd to hear the cheering and shouting. A portion of the crowd moved up in front of the cafe at which the jury were at lunch, and in the hearing of the jury shouted "Hurrah for

Dorsey."

(f). On the last day of the trial, Monday, August 25th, 1913 a large crowd, including many women, had assembled in the court room before court opened, taking up every seat in the court room. The jury were in their room about 20 feet from the court room, and as Mr. Dorsey entered the room, the crowd applauded loudly by clapping of hands and stamping of feet, which the jury perhaps could have heard. The court did nothing but admonish the people that if the applause was repeated, he would clear the court room.

(g). On Monday the last day of the trial after the argument of counsel had been had and the charge of the court had been given and the case was in the hands of the jury, when Solicitor Dorsey left the court room a very large crowd awaited him in front of the court house and shouted and applauded by clapping their hands and shourting, "Hurrah for Dorsey."

(h). When it was announced that the jury had agreed upon a verdict, the Judge of the Superior Court, his honor L. S. Roan, went to the court house which was a comparatively small room on the first floor, at the junction of Hunter and Pryor streets, and found the court room packed with spectators.

Fearful of misconduct among the spectators in the court room, the court of his own motion cleared the room before the jury announced their verdict. When the verdict of guilty was rendered, the fact of the rendition of such verdict was signaled to the crowd on the outside, which consisted of a large concourse and crowd of people standing upon Hunter and Pryor streets. Immediately upon receiving such signal and while the court was engaged in polling the jury and before the polling ended great shouts arose from the people on the outside, expressing gratification. Great applauding, shouting and halloing was heard on the streets and so great became the noise on the streets that the court had dificulty in hearing the responses of the jurors as he polled the [illegible] defendant contends, that the defendant did not have a fair and impartial jury trial and that the demonstration of the crowds

attending court was such as to inevitably affect the jury.

The exhibits hereto attached marked J to AA inclusive are made a part of this ground.

66. Because the fair and impartial trial guaranteed him by the constitution of this State was not accorded the defendant for the following reasons:

The court room wherein this trial was had was situated at the corner of Hunter and Pryor streets. There are a number of windows on the Pryor street side looking out upon the street and furnishing easy access to any noises that would occur upon the street. The court room itself is situated on Hunter st. 15 or 20 feet from Pryor St. There is an open alley-way running from Pryor St., along by the side of the court house, and there are windows from the court room looking on to this alley and any noise in the alley can easily be heard in the Court room. When Solicitor Dorsey left the court room on the last day of the trial, after the case had been submitted to the jury, a large and boisterous crowd of several hundred people was standing in the street in front of the court house and as he came out greeted him with loud and boisterous applause, taking him upon their shoulders and carrying him across the street into the Kiser Building wherein was his office. This crowd did not wholly disperse during the interval between the giving of the case to the jury and the time when the jury reached its verdict, but during the whole of such time a large crowd was gathered at the junction of Pryor and Hunter streets. When it was announced that the jury had reached a verdict, his Honor, Judge L. S. Roan, went to the court room and found it crowded with spectators to such an extent as to interfere with the court's orderly procedure, and fearing misconduct in the court room, his Honor cleared it of spectators. The jury was then brought in for the purpose of delivering their verdict. When the verdict of guilty was announced a signal was given to the crowd on the outside to that effect. The large crowd standing on the outside cheered and shouted and hurrahed at the outset of the poll of the jury, and before more than one juror had been polled to such an extent that the Court had some difficulty in proceeding with the

poll of the jury, which was then in progress, and not finished. Indeed, so great was the noise and confusion without that the Court heard the responses of the jurors during the polling with some difficulty. The court was about 10 feet from the jury. In the court room was the jury, lawyers, newspaper men, and officers of the court, and among them there was no disorder.

The polling of the jury is an important part of the trial. It is inconceivable that any juror, even if the verdict was not his own, to announce that it was not, in the midst of the turmoil and strife without.

The exhibits J to AA inclusive are hereby made a part of this ground, and the Court will err if it does not grant a new trial on this ground.

67. Because the Court erred in failing to charge the jury that if a witness knowingly and wilfully swore falsely in a material matter, his testimony shall be rejected entirely, unless it be corroberated by facts and circumstances of the case or other creditable evidence.

The Court ought to have given this charge, although no written request was formerly made therefor, for the reason that the witnessJim Conley, who testified as to aiding Frank in the disposal of the body, was attacked by the defendant as utterly unworthy of belief, and he admitted upon the stand that he knew that he was lying in the affidavits made by him, with reference to the crime and before the trial.

Especially ought this charge to have been given, because the Court, in his charge to the jury, left the question of the credibility of witnesses to the jury, without any rule of law to govern them in determining their credibility.

68. Because the Court permitted to be read to the jury, over the objection of the defendant made at the time the testimony was offered, that same was immaterial, irrelevant, incompetent, and not binding upon Frank, a part of an affidavit made by the witness Minola McKnight, as follows:

"She pays me $3.50 per week, but last week she paid me $4. and one week she paid me $6.50. Up to the time of this murder I was getting $3.50 per week and the week right after the murder

I don't remember how much she paid me, and the next week they paid me $3.50 and the next week they paid me $6.50, and the next week they paid me $4. and the next week they paid me $4. One week, I don't remember which one, Mrs. Selig gave me $5, but it wasn't for my work, and they didn't tell me what it was for, she just said "Here is $5. Minola."

The Court permitted this part of the affidavit to be read to the jury over the objections above stated, and in doing so erred for the reasons stated.

This was prejudicial to the defendant, inasmuch as it permitted the affidavit of the witness Minola McKnight to be read to the jury to transactions between herself and the Seligs. with which Frank had no connection, but which the Solicitor General insisted showed that Frank's relatives were seeking to influence this darkey by paying her money in addition to that which she earned. The Seligs and Minola McKnight had been asked on cross examination if these statements in this affidavit were true, and had denied that these statements were true.

69. (ppp) Because the Court erred in permitting Mr. Hooper, for the State, to argue to the jury that the failure of the defense to cross examine the female witnesses who, in behalf of the State, had testified to the bad character of Frank for lasciviousness, was strong evidence of the fact that, if the defendant had cross examined them, they would have testified to individual incidents of immorality on the part of Frank, that the defendants knowledge that they would bring out such incidents was the reason for not cross examining the witnesses; and that the jury could, therefore, reasonably know that Frank had been guilty of specific incidents of immorality other than those brought out in the record.

Thedefendant strenuously objected to this line of argument on the part of Mr. Hooper and urged the Court to state to the jury that the failure to cross examine any of said witnesses justified no inference on the part of the jury that the cross-examination, if had, would have brought out anything hurtful to the general character of Frank.

This the Court declined to do and permitted the argument; and,

in so doing, committed error, for which a new trial should be granted.

70 (qqq) Because the Solicitor General, in his argument to the jury, stated, as follows: "The conduct of counsel in this case, as I stated, in refusing to cross examine these twenty young ladies, refutes effectively and absolutely that he had a good character. As I said, if this man had had a good character, no power on earth could have kept him and his counsel from asking where those girls got their information, and why it was they said that this defendant was a man of bad character. Now, that is a common sense proposition; you'd know it whether it was in a book or not. I have already shown you that under the law, they had the right to go into that character, and you saw that on cross examination they dared not do it--------Whenever any body has evidence in their possession, and they fail to produce it, the strongest presumption arises that it would be hurtful if they had; and their failure to introduce evidence is a circumstance against them. You don't need any law book to make you know that; that is true, because your common sense tells you that whenever a man can bring the evidence, and you know that he has got it and don't do it, the strongest presumption arises against him. And you know, as twelve honest men seeking to get at the truth, that the reason these able counsel did not ask those hair-brained fanatics, as Mr. Arnold called them before they had ever gone on the stand-- girls whose appearance is as good as any they brought, girls that you know by their manner on the stand are speaking the truth, girls who were unimpeached and unimpeachable, the reason they didn't ask them? Why? They dared not do it. You know it; if it had never been put in the law books, you would know it."

This address of the Solicitor was made in the hearing, and in the presence of, the jury, without any protest or comment on the part of the Court.

The defendant made no objection to this argument at the time same was being had, for the reason that similar argument made by Mr. Hooper had been objected to by counsel, and their objection overruled. The objection made to the argument of Mr. Hooper was not here repeated, for the reason that the Court had stated, in the outset of the case that objection once noted in the record

need not in similar instances be repeated, but that the Court would assume that similar objections had been made and overruled.

This argument of the Solicitor was not only illegal, but prejudicial to the defendant, in that he, in substance, urged upon the jury that a cross examination of female witnesses for the State, who testified to Frank's bad character for lasciviousness, would, upon cross examination, have testified as to specific acts of immorality against him.

71. (rrr). Because the Court permitted the Solicitor, over the objection of defendant's counsel, to argue before the jury that the wife of the defendant did not speedily visit him when he was first taken under arrest, and that her failure to do so showed a consciousness on her part that he husband was not innocent.

In addressing this question to the jury, the Solicitor said: "Do you tell me that there lives a true wife, conscious of her husbands innocence, that would not have gone through snap-shotters, reporters, and every thing else to have seen him. Frank said that his wife never went there, because she was afraid that the snap-shotters would get her picture, because she didn't want to go through the line of snap-shotters. I tell you, Gentlemen of the Jury, that there never lived a woman conscious of the rectitude and innocence of her husband who would not have gone through snap-shotters, reporters, and the advice of any Rabbi under the sun- and you know it.

Defendant's counsel objected to this line of argument, when the same was being made, upon the ground that the conduct of his wife could in no sense be used as evidence of Frank's guilt, and that the Solicitor had no right to argue as he did.

The Court declined to stop the argument, but permitted it to continue. The Solicitor impassionately argued it to the jury--that Mrs. Frank's conduct in not visiting her husband was strong evidence of his guilt.

argument was highly prejudicial to the defendant and the court erred in permitted it to be made and in not reprimanding the Solicitor General for the making of such an argument

72. (sss). Because the Court permitted the Solicitor General,

in arguing the relative value of the expert testimony delivered by the physicians called for the State and defense, to intimate that the defense, in calling its physicians had been influenced by the the fact that certain physicians called were the family physicians of some of the jurors. In discussing it, the solicitor said: "It would not surprise me if these able, astute gentlemen, vigilent as they have shown themselves to be, did not go out and get some doctors who have been the family physicians, who are well known to some of the members of this jury, for the effect it might have upon you; and I am going to show that there must have been something besides the training of these men, and I am going to trace them with our doctors. I can't see any other reason in God's world for getting out and getting these practitioners, who have never had any special training on stomach analysis, and who have not had any training on the analysis of tissues--like a pathologist has had, except upon that theory."

Objection was made to this argument of the Solicitor, at the time it was being made, upon the ground that there was no evidence to support any such argument; that it was illegal, prejudicial, and highly improper.

73. Because the juror A. H. Henslee was not a fair and impartial juror, but was prejudiced against the defendant when he was selected as a juror, had previously thereto formed and expressed a decided opinion as to the guilt of the defendant and, when selected as a juror, was biased against the prisoner in favor of the State. Affidavits are hereto attached and marked Exhibits A, B, C, D, E, I, BB. CC. DD. EE and J. J. KK. LL. MM. NN. which are hereby made a part of this motion for new trial. Affidavits sustaining the character of the witnesses against said Henslee are hereto attached, marked Exhibits FF, GG, HH and II

The conduct of this juror, as shown by the affidavits and other evidence, the condition, conduct, and state of mind of this juror is conclusive that the defendant did not have a fair and impartial jury trial, as provided by the laws and the constitution of this State, and a new trial should be granted. Upon failure to doso, the Court will commit error.

74. Because the juror Johenning was not a fair and impartial juror, in that he had a fixed opinion that the defendant was guilty prior to, and at, the time he was taken on the jury and was not a fair and impartial and unbiased juror. Affidavits showing that he was not a fair and impartial juror are hereto attached and marked Exhibits E. F. G. K.and I, and made a part of this motion for new trial.

The opinion, conduct and state of mind of this juror prior to, and at the time of, his selection as a juror shows that the defendant did not have a fair and impartial trial, as provided by the laws and the Constitution of this State; and, because of the unfairness and impartiality of this juror, a new trial should be granted, and the Court will commit error in not granting it.

75. Because this defendant, as he contends, did not have a fair and impartial jury trial, guaranteed to him under the laws of this State, for the following reasons , to-wit.

Public sentiment seemed to the Court to be greatly against him. The court room was a small room, and during the argu ment of the case so far as the Court could see about every seat in the court room was taken, in and without the bar, and the aisles at each end of the court room were packed with spectators. The Jury, in going from the jury seats to the jury room, during the session of the court, and in going to and from from the court room morning, evening and noon, were dependent upon passage-ways made for them by the officers of Court. The bar of the court room itself was crowded, leaving only a small space to be occupied by counsel in their argument to the jury. The jury box, when occupied by the jury, was inclosed by the crowd sitting and standing in such close proximity thereto that the whispers of the crowd could be heard during a part of the trial.

When the Court's attention was called to this he ordered the Sheriff to move the crowd back, and this was done.

During the argument of the solicitor, Mr. Arnold of counsel for the defense, made an objection to the argument of the

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solicitor, and the crowd laughed at him, and Mr. Arnold appealed to the court.

On Saturday, prior to the rendition of the verdict on Monday, the Court was considering whether or not he should go on with the trial during Saturday evening, or to what hour he should extend it in the evening, the excitement in and without the court room was so apparent as to cause apprehension in the mind of the Court as to whether he could safely continue the trial during Saturday afternoon; and, in making up his mind about the wisdom of thus continuing the trial, his Honor conferred with, while on the stand, and in the presence of the jury, the Chief of Police of Atlanta, and the Colonel of the Fifth Georgia Regiment stationed in Atlanta conferred with his Honor. Not only so, but the public press, apprehending trouble if the case continued on Saturday, united in a request to the Court that he not continue the Court on Saturday evening. The Court, being thus advised, felt it unwise to extend the case on Saturday evening, and continued it until Monday morning. It was evident on Monday morning that the public excitement had not subsided, and that it was as intense as it was on Saturday previous. The same

excited crowds were present, and the court house was in the same crowded condition. When the solicitor entered the court room he was met with applause by the large crowd--ladies and gentlemen present by stamping their feet and clapping their hands, while the jury was in their room about twenty feet away.

While Mr. Arnold of the defense was making a motion for a mis trial, and while taking testimony to support it before the Court, the crowd applauded when the witness testified that he did not think the jury heard the applause of the crowd on Friday of the trial. The jury was not in the court room, but were in the jury room about 20 feet away.

When the jury was finally charged by the Court, and the case submitted to them, and when Mr. Dorsey left the court room, a large crowd on the outside of the court house, and in the streets cheered by yelling, and clapping hands, and yelling "Hurrah for Dorsey":

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When it was announced that the jury had agreed upon a verdict crowds had thronged the court room to such an extent that the Court felt bound to clear the court room before receiving the verdict.

This the Court did. But, when the verdict of the jury was ren dered, a large crowd had thronged the outside of the court house; some one signaled to the outside what the verdict was, and the crowd on the outside raised amighty shout of approval. So great was the shouting and applause on the outside that the Court had some difficulty in hearing the response of the jurors as he called them.

The defendant was not in the court room when the verdict was rendered, his presence having been waived by his counsel. This waiver was accepted and acquiesced in by the Court, because of the fear of violence that might be done the defendant were he in Court when the verdict was rendered.

When Mr. Dorsey left the court room, he was met at the court house door by a multitude, was hurrahed, cheered, taken upon the shoulder of a part of the crowd and carried partly to the build ing opposite, wherein he had his office.

This defendant contends that the above recital shows that he did not have a fair and impartial jury trial, that a new trial ought to be granted, and that the court failing to grant such new trial, will commit error.

In support of this ground of the motion movant refers to the affidavits hereto attached marked Exhibits J to AA inclusive, and hereby made a part of this motion for new trial.

76. Because the Court erred in not leaving it to the jury to say whether or not, under the facts, the witness Conley was an accomplice.

The state insisted that Conley was watching for Frank to enable him to have connection with some girl, naturally or unnaturally; and Frank seeking to get her consent and failing killed her to insure her silence, and then employed Conley who had previously been watching for him to enable him to conceal her body. If Conley was aiding and abetting Frank in his transactions with Mary Phagan, and if, as a natural and probable result of

such transaction, Mary Phagan met her death, then Conley would be an accomplice of Frank, although he had no personal part in her killing.

The Court, under proper instructions, ought to have left it to the jury to say whether Conley was or not an accomplice of Frank; and, in failing to do, and because he failed to do so the Court committed error.

77. The Court erred in not charging the jury that if, under instructions given them, they found that Conley was an accomplice of Frank, they could not convict Frank under the testimony of Conley alone; but that, to do so, there must be a witness other than Conley or circumstances corroborating the evidence of Conley

78. Because the Court permitted the witness Irene Jackson at the instance of the solicitor General, and over the objection of the defendant, made at the time the testimony was offered, that the same was irrelevant, immaterial, illegal, and prejudicial to the defendant, to testify substantially as follows:

I remember having a conversation with Mr. Starnes about a dressing room incident.I told him that Mr. Frank came to the door of the dressing room while Emily Mayfield was dressing. He looked and turned around and walked out--just pushed the door open and looked in. I don't know whether he smiled or not. I never noticed to see whether he smiled or not; he just kind of looked at us and turned and walked out. I didn't time him as to how long he stayed; he just came and looked and turned and walked out. At the time, Miss Emily Mayfield had off her top dress and was holding her old dress in her hand to put it on. I did not report that the forelady, but Miss Ermilie did. I have heard remarks other than those of Miss Mayfield about Frank going into the dressing room, but I don't remember who said them, I just remember I heard something about it, two or three different times, but I don't remember anything about it, just a few times. I heard the girls talking about Mr. Frank going into the dressing room on two of three different occasions. It was the middle of the week after we started to work there; I don't remember the time. Mr. Frank also entered the dressing room when my sister was in there laying down; she just had her feet up on the table;

she had them on a stool, I believe,She was dressed. I don't remember how her dress was; I didn't look, I paid no attention to him, only he just walked in and turned and walked out; looked at the girls that were sitting in the window and walked out. There was something said about this, but I don't remember. I have heard something about him going in the room and staring at them, but I don't remember exactly. Mr. Frank walked in the dressing room on Miss Mamie Kitchens. She and I were in there. I have heard this spoken of, but I don't remember. I have heard them speak of other times, when I wasn't there. Mr. Frank said nothing either time when I was there. The door was pushed to, but there was no way to fasten the door. He pushed the door open and stood in the door. the dressing room had a mirror in it. It was all one room, except there were a few lockers for the foreladies, and there was a place where the girls changed their street dresses and got into their working dresses, and vice versa. There was no way for Mr. Frank to tell before he opened the door what the condition of the girls was in there. I do not know whether he knew they were in there or not. That was the usual time for the girls to go in the dressing room, undress and get ready to go to work, changing their street clothes and putting on their working clothes. We had all registered on before we went up there in the dressing room. Mr. Frank knew the girls had stopped there to register. The day he looked in the dressing room at Miss Mayfield, he smiled, or made some kind of a face that looked like a smile--smiling at Miss Mayfield, he didn't speak or didn't say a work.

This evidence was objected to for the reasons above stated, and for the further reason that statements tending to show the conduct of Mr. Frank with girls, in going into the dressing room with girls, was intended to create prejudice in the minds of the jurors against the defendant; and, not to illustrate the question of whether he was or was not the murderer of Mary Phagan. The Court overruled these objections and let the testimony go to the jury, and, in doing so, movant contends, [illegible] for the reasons above stated.

79. (zzz). Because the Court permitted the witness, Harlee Branch, at the instance of the Solicitor General, to testify to

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incidents at the Pencil Factory, wherein Conley, after having made the third affidavit, purported to re-enact the occurence of the murder between himself and Frank, wherein the body of Mary Phagan was taken from the office floor to the cellar of the factory, the testimony permitted by the Court being substantially as follows

" I will have to give you the time of Conley's arrival at the Factory approximately. I was up there at twelve o'clock, and I was a few minutes late. Conley had not arrived there then. We waited until they brought him there, which was probably ten or fifteen minutes later. The officers brought Conley into the main entrance of the factory here and to the stair case--I don't know where the stair case is here--yes, hereit is (indicating on diagram) and they carried him up here and told him what he was therefor, and questioned him, and made him understand that he was to re-enact the pantomime. After a few minutes conversation, and a very brief conversation, Conley led the officers back here and turned of to his left to a place back here: I guess this is it (indicating on diagram), right where this is near some toilets and he was telling his story as he went through there, and he said when he got up there, he went back and found this body in that place. He was talking constantly--all the time; I don't know how he made out a part of his story. Well, when he got back---After reaching this point at the rear left side of the factory, describing the position of the body, as he stated it, he stated the head was lying towards the North and the feet towards the South, as indicated, and there was a cord around the neck. He didn't state how long it took for the various movements. I didn't time it: I know the time I arrived there and the time I left the factory. Conley said when he found the body he came up to Mr. Frank--called to him some point along here I should judge (indicating on the diagram). I don't understand this diagram exactly. And he told him the girl was dead, and I don't know just exactly what Frank said. I will try to eliminate as much of that conversation as I can. Anyhow, he said he came on up to where Mr. Frank was, and that he was instructed to go to the cotton room, which he showed us; I don't know, it must be on the same side of the building about here. I judge (indicating), and he went in there. He showed us the cotton room, and he said he went back, and he

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said he said he went back, and he did go back, led us back, and told about taking up the body, how he brought it up on his shoulder, and then, in front of a little kind of impression on the wall, he said he dropped it, and he indicated the place, and then he come up and told Mr. Frank about it--that he would have to come and help him or something like that-- and that Mr. Frank came back and took the feet. I believe he said, and he took the head, and they brought the body up to the elevator and put it on the elevator. He was enacting this all the time and talking all the time. He described how the body was put on the elevator, and he said Mr. Frank run the elevator down, and he went down on the elevator. On this trip he went down in the elevator to the basement, and he said Mr. Frank helped to take the body out, and they dropped it there, and Mr. Frank told him to take it up and carry it back, and he put the body on his shoulder and carried it back to this saw dust which is away back here, and that he came on back, and he said there was some things in here which he threw on this trash pile, and Mr. Frank, he said, was up in the cubby hole he said, somewhere back there-- and later he led us up there-- and that Mr. Frank told him to run the elevator up; so Conley and the officers and the rest of us who were with him came up on the elevator, and when they got to the first floor, just before getting to the first floor, he said this was where Mr. Frank got on the elevator. Mr. Frank was waiting there for him. Then they brought the elevator on up to the second floor, and he had them to stop the elevator, just, I suppose, a foot or a little more below the landing; and he said Mr. Frank jumped off when the elevator was about that point, and after getting up, he said Mr. Frank went around the elevator to a sink that he showed us back of the elevator, to wash his hands, and he waited out in front and he said he shut off the power while Mr. Frank was gone around there; and when Mr. Frank came back, they went in the office, and he led us on in the office through--there is an outer office there, and he came in this way and come through in this office back here, this inner office, and he indicated Mr. Frank's desk and a desk right behind it: I presume this is the

two desks (indicating); that Mr. Frank sat down in the chair at that desk, and he told him to sit at the other desk, and Mr. Frank told him to write some notes; and he was asked by some of the officers to write what Mr. Frank told him to write, and he sat down there and wrote one note, and I believe---I know the note he wrote, and I don't know whether he wrote one or two and that Mr. Frank handed him sone money and that later he took it back, and I don't remember whether he gave him the cigarettes and money before or after this, I don't re-call. Anyway when he was in here, after he had written the notes for the officers, I found it was time for me to get in the office with my copy. He hadn't finished; he was still sitting there; and I telephoned in to the office for relief--someone to relieve me- and I went to the office and I left him there in the office, and I went in. I judge it was about a quarter past twelve when Conley got there. I must have gotten there five minutes before that time. I left about one o'clock. They rushed Conley right up the steps and, probably two or three minutes after he got up there, he began this enactment, and he went very rapidly- we sort of trotted to keep behind him. Questions were constantly asked him by four or five of the officers. I have cut out a good deal of Conley's talking; just how much, I have no way of indicating. He was talking constantly, except when interrupted by questions. I didn't time it when I got there. When I got to the office from the Police Station it was tenminutes after twleve and I walked down just about a block and a half. Conley got there, I should say, about five minutes after I did. I left a little after one, probably five or ten minutes. It would be a difficult thing for me to estimate how much time it took Conley to enact what he did, leaving out the conversation he had with different men. While he was acting, he was acting very rapidly; he kept us on the trot. There is no way for me to give you my opinion as to how long it took Conley to go through that demonstration there was no way to [illegible] difference between the two--between the time he was acting and talking. I don't attempt to do that.

The defendant objected to this testimony, because;

(a). This so-called experiment made with Conley was solely an endeavor on their part to justify his story;

(b). The sayings and actings of Conley, as aforesaid, not under oath, had and made without cross examination, and reported by the witness to the court, the net result of which is a repitition of Conley's statement, without the sanction of an oath.

(c). That Conley went to the factory immediately after making his last affidavit, that that last affidavit is not the way he tells the story on the stand; that he tells it wholly differently on the stand, at least differently in may particulars; that it cannot help the jury for Conley to go to illustrate that affidavit when he says now on the stand that much of it was a lie, and that it did not happen that way at all; that this evidence was of another transaction, not binding upon this defendant.

The Court overruled the objection and admitted the testimony to the jury, and, in doing so, committed error, for the reasons above stated.

80. (aaaa). Because the Court over over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudical to the defendant, permitted the Solicitor General to ask the following questions, and the witness, Miss Maggie Griffin, to make the following answers:

Q. Are you acquainted with the general character of Leo M. Frank for lasciviousness, that is his relations with women?

A. Yes sir.

The Court admitted the above questions and answer, over objection of the defendant as above stated, and thereby erred for the reason stated.

81 (bbbb). Because the Court over objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the Solicitor General to ask the following questions, and the witness Miss Myrtie Cato, to make the following answers:

Q. Miss Cato, I want to ask you one other question, also. Are you acquainted with the general character of Leo M. Frank

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for lasciviousness; that is, his relations towards women?

A. Yes sir.

Q. Is it good or bad?

A. Bad.

The Court admitted the above questions and answers, over objection of the defendant as above stated, and thereby erred, for the reasons stated.

82. (cccc). Because the Court over objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant permitted the Solicitor General to ask the following questions, and the witness, Mrs. H. R. Johnson, to make the following answers:

Q. Now, are you acquatinted with his (Frank!s) general character for lasciviousness; that is, his general character towards women generally?

A. No sir, not very much.

Q. Not very much? Well, answer the question; yes or no; are you acquainted?

Q. All right, she said, not very much.

The Court admitted the above questions and answer, over the objection of defendant as above stated and thereby erred, for the reasons stated.

83 (dddd) Because the Court, over the objections of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor general to ask the following questions, and the witness Miss Marie Karst, to make the following answers:

Q. Bad; now, Miss Karst, I will ask you if you are acquainted with his (Frank's) general character for lasciviousness, that is, his attitude towards girls and women?

A. Yes sir.

Q. Is that character good or bad? A. Bad.

The Court admitted the above questions and answers, over the objection of the defendant as above stated, and thereby erred for the reason stated.

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84. (eeee). Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor general to ask the following questions, and the witness, Miss Nellie Pett is to make the following answers:

Q. Are you acquainted with his (Frank's) general character for lasciviousness; that is, with women prior to that time?

A. Yes sir.

Q. Is it good or bad? A. Bad.

The Court admitted the above questions and answers, over objection of the defendant as above stated, and thereby erred, for the reasons stated.

85 (ffff) Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the Solicitor General to ask the following questions, and the witness, Miss May Davis, to make the following answers:

Q. I want to ask you another question. Are you acquainted with the general character of Leo M. Frank, prior to April 26, 1913, as to lasciviousness, that is, his relations with girls and women?

A. Yes.

Q. Is that good or bad? A. Bad.

The Court admitted the above questions and answers, over objection of the defendant as above stated, and thereby erred, for the reasons stated.

86. (gggg) Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the Solicitor General to ask the following questions, and the witness. Mrs. Mary E. Wallace, to make the following answers:

Q. I will ask you now if you are acquainted with his general character for lasciviousness; that is, as to his (Frank's) attitude with towards girls and women? A. Yes sir.

Q. Is that good or bad? A. Bad.

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The Court admitted the above questions and answers, over the objection of the defendant as above stated, and thereby erred, for the reasons stated.

87 (hhhh). Because the Court over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor general to ask the following questions, and the witness, Miss Estelle Winkle, to make the following answers:

Q. Are you acquainted with his (Frank(s) general character for lasciviousness; that is, his relations with girls and women?
A. Yes sir, Is that Good or bad? A. Bad.

The court admitted the above questions and answers, over objection of defendant, made at the time the evidence was offered, and thereby erred, for the reasons stated.

88 (iiii) Because the Court erred, over the objection of the defendant that the same was irrelevant and immaterial and prejudicial to defendant, in permitting the witness Louis Ingram to testify as follows:

" I am a conductor for the Georgia Railway & Power Co., I come to town of them cars coming in on English Avenue going to Cooper street, known as the English Ave., car. I have seen them come in and been on it when it come in, the English Ave., car due at the junction of Marietta and Broad sts., according to schedule at 12:07. I have seen the car due at Marietta and Broad Sts., according to schedule at 12:07, the English Ave., car, several time come in ahead of the car I was coming in on, as much ahead as four minutes, I saw a car that came in this morning that was due in town at 8:30 and it got in at 8:24. I know the Motorman Matthews. I have seen his car ahead of time. I could not say how often."

The Court permitted this testimony over the objection before stated, and in doing so erred for the reasons stated. This was prejudicial to the defendant because it tended to show that at times other than on the day of the murder, the English Ave. car, which on that day was run by the witness Motorman Matthews, had reached Marietta and Broad Sts., four minutes ahead of time. It

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became material to determine what time this English Ave., car reached Broad Street on the day of the murder. The motorman Matthews and the conductor, swore that on that day the English Ave., car reached Broad Street at 12:07. The Court permitted this and other like testimony to be introduced as tending to discredit their statements that the car was on schedule time that day. In doing this the Court erred, for the fact that the English Ave., car was ahead of time as much as four minutes on other days did not indicate that it was ahead of time on the day of the murder.

89. (jjjj). Because the Court erred, over the objection of the defendant that the same was irrelevant and immaterial and prejudicial to defendant, in permitting the witness W. D. Owens to testify as follows:

". I run on what is known as Route Eight, White City to Howell Station, for the Georgia Railway & Power Co., We were due in town at 12:05. My schedule is ahead of the Cooper Street and English Ave., schedule two minutes I have known the English Ave and Cooper street car to get to the junction of Marietta and Broad Streets ahead of my car. The English Ave., car is due there at 12:07; my schedule at 12:05. I have known the English Ave., car to get there as much as two minutes ahead of us. That would make the English Ave., car four minutes ahead of time. I have known this to occur after April 26th, I don't know whether it occurred prior to that time"

The Court permitted this testimony over the objection before stated, and in doing so erred for the reasons stated. This was prejudicial to the defendant because it tended to show that at times other than on the day of the murder, the English Ave., car which on that day was run by the witness Motorman Matthews, had reached Marietta and Broad Streets four minutes ahead of time. It became material to determine what time this English Ave ., car reached Broad Street on the day of the murder. The Motorman Matthews and the conductor, swore that on that day the English Ave., car reached Broad Street at 12:07. The Court permitted this and other like testimony to be introduced as tending to discredit their statements that the car was on schedule time that day. In doing this the Court erred, for the fact that the

English Avenue car was ahead of time as much as four minutes on other days did not indicate that it was ahead of time on the day of the murder.

90. (kkkk). Because of the following colloguy which occured during the trial and while the witness, John Ashley **Jones**, was on the stand, during the cross examination of Jones by the Solicitor:

Q. You never heard anybody down there say anything about Mr. Frank's practices and relations with the girls.

A. Not in the Pencil Factory.

Q. Not at all? You never did talk to any of these young girls, did you?

A. No, I don't happen to know any of them.

Q. Or any of the men?

A. No.

Q. You don't know what kind of practices Mr. Frank may have carried on down there in the Pencil Factory?

A. No.

Q. You don't know, you never heard anybody say that Mr. Frank would take girls in his lap in his office here?

A. No.

(Here objection was made by Mr. Arnold)

The Court: On cross examination he can ask him if he has heard of certain things.

Mr. Arnold: Up to April 26th?

The Court, Yes sir.

Mr. Dorsey: I am not four-flushing or any such thing; I am going to bring the witnesses here.

Q. You never heard of Frank going out there to Druid Hills and being caught did you, before April 26th?

A. No, but our reporter, it was his business to find out, and if he had found it out, he certainly would not have issued such a policy.

Q. Now about twelve months ago, you never heard of Frank kissing [illegible] there.

A. No, I never heard such a thing.

Q. You never heard of that at all?

A. I never heard that. I had been in Mr. Frank's----

Q. You never talked to Tom Blackstock, then, did you?

A. I haven't the pleasure of Mr. Blackstock's acquaintence.

Q. Did you ever know Mrs. L. D.Coursey?

A. I can't say that I ever heard of her.

Q. Miss Myrtie Cato, you never heard of her, and that he would go into the----

A. Mr. Dorsey, I have been down there.

Q. By the Court: He wants to know if you ever heard of that before.

Q. He made no apology and no explanation, but just walked right on in there when they were lying on the couch?

A. I never heard that.

Q. Did you ever hear of his putting his arms around Myrtie Cato in the office?

A. No sir.

Q. Did you ever hear about the time he went in on little Gertie Jackson, that was sick, lying in the dressing room with her dress up, and stood up there and looked at her, and hear any talk of the girls there about his attitude?

A. No sir.

Q. Did you ever hear about his frequently going into the dressing room with Vernie McDaniel?

A. No sir.

Q. Did you ever hear of the time it was said that Miss Pearl Burrelson --about five years ago, when he held out the money in one hand and put his hand on the girl, that she threw the monkey wrench at him? You never heard of that time?

A. No sir.

Q. Did you ever talk to Mrs. Martin Duncan?

A. No sir, not that I know of.

Q. Did you ever hear them say that he paid special attention to the girls, and winked and smiled at them, and had nude pictures hung up in his office, and walked around and slapped the girls on the seat?

Q. No sir.

Q. Miss Wingate, 34 Wills Street, did you ever talk to her

about Frank?

A. No sir, I don't know her.

Q. Did you ever hear C. D. Donegan Duncan, talk about Frank? -

A. No sir.

Q. You never heard any of these factory people talk about him?

A, No sir.

The Court erred in permitting the Solicitor, although the witness denied hearing all of the remarks referred to, to say in the presence of the jury that he was not four-flushing, but that he was going to bring the witnesses there, thereby improperly saying to the jury that he had such witnesses and meant to bring them in.

The Court erred in not withdrawing this whole subject from the jury and in not rebuking the Solicitor General for injecting the questions in the case and asserting that he had witnesses to prove the things asked about.

These suggestions and intimations of the Solicitor General were exceedingly prejudicial to the defendant, and for making them he ought to have been severally rebuked by the Court, and failure of the Court to do so was cause for a new trial.

91. (1111) Because the court erred in charging the jury as follows:

" Is Leo M. Frank guilty? Are you satisfied on that beyond a reasonable doubt from the evidence in this case? Or is his plea of not guilty the truth.

The Court erred in putting the proposition of the defendant's guilt or innocence to the jury in this manner, because the effect of the same was to put the burden upon the defendant of establishing his plea of not guilty, and the further effect was to impress upon the jury that unless they believed that the defendant's plea of not guilty was the truth that they could not acquit. The tendency of this charge was to impress upon the jury that they were to consider only upon the one side as to whether they believed Leo M. Frank guilty or upon the other side they were to consider only the question of whether they believed his plea of not guilty, and there was no middle ground in the case, and movant says that the error in this charge is that it leaves entirely out of view the consideration of the third proposition which the

jury had the right to consider, and that is as to whether, even though they did not believe his plea of not guilty the truth, still if they had a reasonable doubt in their minds of his guilt they should acquit him.

92. (qqqq) Movant further says that a new trial should be granted because of the following:

Mr. Dorsey, the solicitor general, in the concluding argument, made the following statement.

"Now, gentlemen, (addressing the jury) Mr. Arnold spoke to you about the Durant case. That case is a celebrated case; It was said that that case was the greatest crime of the century. I don't know where Mr. Arnold got his authority for the statement that he made with reference to that case. I would like to know it."

Whereupon the following colloquy occurred:

" Mr. Arnold: I got it out the the public prints, at the time , Mr. Dorsey, published all over the country: I read it in the newspapers, that's where I got it."

Mr. Dorsey (resuming): "On April 15, 1913, Mr. C. M. Pickett, the District Attorney of the City of San Francisco, wrote a letter"

Mr. Arnold: I want to object to any communication between Mr. Pickett and Mr. Dorsey, it's just a personal letter from this man, and I could write to some other person there and get information satisfactory to me, no doubt, just as Mr. Dorsey has done, and I object to his reading any letters or communications from anybody out there."

"Mr. Dorsey: This is a matter of public notoriety, Here's his reply to a telegram I sent him, and in view of his statement, I have got a right to read it to the jury".

" Mr. Arnold: You can argue a matter of public notoriety, you can argue a matter that appears in the public prints,- my friend can, but as to his writing particular letters to particular men, why, that's introducing evidence, and I must object to it; he has got a right to state simply his recollection of the occurrence, but he can't read any letters or telegrams from any particular people on the subject."

". Mr. Dorsey: Mr. Arnold brought this in, and I telegraphed to San Francisco, and I want to read this telegram to the jury; can't I do it?"

"Mr. Arnold: If the Court please I want to object to any particular letter or telegram, I can telegraph and get my information as well as he can, I don't know whether the information is true, I don't know who he telegraphed about it; I have got a right to argue a matter that appears in the public prints and that's all I argued,-what appears in the papers,- it may be right or wrong, but if my friend has a friend he knows there and writes and gets some information, that's introducing evidence, and I want to put him on notice that I object to it. I have got the sameright to telegraph there and get my own information. And besides, my friend seems to know about that case pretty well, he's writing four months ago. Why did he do it?"

Mr. Dorsey, (resuming): "Because I anticipated some such claim would be made in this presence."

". Mr. Arnold: You anticipated it, then, I presume, because you knew it was published; that's what I went on".

Mr. Doresy (resuming); " I anticipated it, and I know the truth about that case".

Mr. Arnold, I object to his reading any communication unless I havethe right to investigate it also; I am going only on what I read in the public press. April 15th, is nearly two weeks before the crime is alleged to have been committed. I want to record an objections right now to my friend doing any such thing as that, reading a telegram from anybody picked out by my friend Dorsey to give him the kind of information he wants for his speech, and I claim the right to communicate out there myself and get such information as I can, if he's given the right to do it."

" The Court:- I'll either have to expunge from the jury what you told the jury, in your argument, or --"

" Mr. Arnold: I don't want it expunged, I stand on it."

"The Court: I have either got to do one of the two."

"Mr. Dorsey: No sir, can't I stated to this jury what I know about it, as well as he can state what he knows"?

". Mr. Arnold: Certainly he can, as a matter of public notoriety, but not as a matter of individual information or opinion".

"The Court: You can state, Mr. Dorsey, to the jury, your information about the Durant case, just like he did, but you can't read anything,- don't introduce any evidence".

Mr. Dorsey (resuming) "My information is that nobody has ever confessed the murder of Blanche Lamont and Minnie Williams

But, gentlemen of the jury, as I'll show you by reading this book, it was proved at the trial, and there can be no question upon the fact, Theodore Durant was guilty, the body of one of these girls having been found in the belfry of the church in question; and the other in the basement, Here's the book containing an account of that case, reported in the 48 Pacific Reporter, and this showed, gentlemen of the jury, that the body of that girl, stripped stark naked, was found in the belfry of Emanuel church, in San Francisco, after she had been missing for two weeks, It shows that Durant was a medical student of high standing, and a prominent member of the church, with superb character, a better character than is shown by this man Leo M. Frank, because not a soul came in to say that he didn't enjoy the confidence and respect of every member of that large congregation, and all the medical students with whom he associated. Another thing, this book shows that the crime was committed on 1895, and this man Durant never mounted the gallows until 1898, and the facts are that his mother took the remains of her son and cremated them, because she didn't want them to fall into the hands of the medical students, as they would have done in the State of California, had she not made the demand and received the body. Hence, that's all poppy-cock he was telling you about. There never was a guiltier man, there never was a man of higher character, there never was a more courageous jury or better satisfied community, than Thedore Durant, the jury that tried him, and the people of San Francisco, where he lived and committed his crime and died ."

Movant says that a new trial should be granted, because of the fact that the Court did not squarely and unequivocally rule that the jury should not consider the statement Mr. Dorsey made as to the letter, C. M. Pickett, the District Attorney, had

written, and that a new trial should be granted because the argument was illegal, unwarranted, not sustained by the evidence, and tended to inflame and unduly prejudice the jury's mind. Neither the letter from Pickett nor the telegram was read further than is shown in the foregoing statement.

93. The movant says that a new trial should be granted because of the following grounds:

The Solicitor General having, in his concluding argument, made the various statements of fact about the Durant case, as shown in the preceding ground of this motion, the judge erred in failing to charge the jury as follows, to-wit:

The jury was instructed that the facts in other cases read or stated in your hearing are to have no influence upon you in making your verdict. You are to try this case upon its own facts and upon the opinion you entertain of the evidence here introduced

94. Movant says that a new trial should be granted because of the following ground:

The Solicitor General having, in his concluding argument, made the various statements of fact about the Durant case, as shown in the preceding ground of this motion, the judge erred in failing to charge the jury as follows: to-wit: The Jury are instructed that the facts in other cases read or stated in your hearing are to have no influence upon you in making your verdict, You are to try this case upon its own facts and upon the opinion you entertain of the evidence here introduced.

95. (ssss) Because the Court should have given in charge the instructions set forth in the preceding ground, because of the following argument made by the Solicitor General, in his concluding argument to the jury, said argument being a discussion of the facts of other cases, and requiring such charge as was requested, the remarks, of the Solicitor General in conclusion, being as follows:

" Oscar Wilde an Irish knight, a literary man, brilliant, the author of works that will go down the ages,--Lady Windemere's (?) Fan, De Profundis, which he wrote while confined in jail; a man who had the efforntery and the boldness, when the Marquis of Queensberry saw that there was something wrong between this intellectual giant and his son, sought to break up their companionship;

he sued the Marquies for damages, which brought retaliation on the part of the Marquis for criminal practices on the part of Wilde, this intellectual giant; and wherever the English language is read, the effrontery, the boldness, the coolness of this man, Ossar Wilde, as he stood the cross examination of the ablest lawyers of English,- an effrontery that is characteristic of the man of his type, that examination will remain the subject matter of study for lawyers and for people who are interested in the type of prevert like this man. Not even Oscar Wilde's wife, for he was a married man and had two children, - suspected that he was guilty of such immoral practices, and, as I say, it never would have been brought to light probably, because committed in secret, had not this man had the effrontery and the boldness and the impudence himself to start the proceeding which culminated in sending him to prison for three long years. He's the man who led the aesthetic movement, he was a scholar, a literary man, cool, calm, and cultured, and as Isay, his cross examination is a thing to be read with admiration by all lawyers, but he was convicted and in his old age, went tottering to his grave, a confessed pervert. Good character? Why, he came to America, after having launched what is known as the "aesthetic movement" in England, and throughout this country lectured to large audiences, and it is he who raised the sunflower from a weed to the dignity of a flower. Handsome, not lacking in physical or moral courage, and yet a pervert, but a man of previous good character.

Abe Ruef, of San Francisco, a man of his race and religion-- was the boss of the town, respected and honored, but he corrupted Schmitt, and he corrupted everything that he put his hands on, and just as a life of immorality, a life of sin, a life in which he fooled the good people when debauching the poor grils with whom he came in contact, has brought this man before this jury so did evehtually Abe Ruef's career terminate in the penitentiary. I have already referred to Durant. Good character isn't worth a cent when you have got the case before you. And crime don't go only with the ignorant and the poor. The ignorant, like Jim Conley, as an illustration, commit the small crime, and he doesn't know anything about some of this higher type of

crimes, but a man of high intellect and wonderful endowments which, if directed in the right line, bring honor and glory if those same faculties and talents are perverted and not controlled as was the case with this man, they will carry him down. Look at McCue, the mayor of Charlottesville; a man of such reputation that the people elevated him to the head of that municipality; but notwithstanding that good reputation, he didnt have rock bed character, and becoming tired of his wife,he shot her in the bath tub, and the jury of gallant and noble and courageous Virginia gentlemen, not withstanding his good character, send him to a felon's grave. Richeson, of Boston, was a preacher, who enjoyed the confidence of his flock. He was engaged to one of the wealthiest and most fascinating women of Boston, but an entanglement with a poor little girl, of whom he wished to rid himself, caused this man, Richeson, to so far forget his character and reputation and his career, as to put her to death: And all these are cases of circumstantial evidence. And after conviction, after he had fought, he at last admitted it, in the hope that the Governor would at last save his life, but he didn't do it, and the Massachusetts jury and the Massachusetts Governor were courageous enough to let that man who had taken that poor girl's life to save his reputation as the pastor of his flock, go, and it is an illustration that will encourage and stimulate every right thinking man to do his duty. Then, there's Beattie, Henry Clay Beattie, of Richmond, of splendid family, a wealthy family proved good character, though he didn't possess it, took his wife, the mother of a twelve month's old baby, out automobiling, and shot her; yet that man, looking at the blood in the automobile, joked, joked, joked. He was cool and calm, but he joked too much: and although the detectives were abused and maligned, and slush funds to save him from the gallows were used, in his defense a courageous jury, and honest jury a Virginia jury, measured up to the requirements of the hour and sent him to his death; thus putting old Virginia and her citizenship on ahigh plane. And he never did confess, but left a note to be read after he was dead, saying that he was guilty. Crippen, of England, a doctor a man of high standing, recognized ability and good reputation,

killed his wife because of infatuation for another woman, and put her remains away where he thought as this man thought, that it would never be discovered; but murder will out, and he was discovered, and he was tried, and he it said to the glory of old England, he was executed."

96. Movant further says that a new trial should be granted, because of the following ground:

The Solicitor General, in his concluding argument, spoke to the jury as follows:

" But to crown it all,in this table which is now turned to the wall, you have Lemmie Quinn arriving, not on the minute, but to serve your purposes, from 12;20 to 12;22" (referring to a table which the defendant's counsel had exhibited to the jury giving as was claimed by counsel, in chronological order, the happening of events as to defendant on April 26) "but that, gentlemen, conflicts with the evidence of Freeman and the other young lady, who placed Quinn by their evidence, in the factory before this time".

Whereupon the following occurred:

"Mr. Arnold, There isn't a word of evidence to that effect; those ladies were there at 11:35 and left at 11:45, Corinthia Hall, and Miss Freeman, they left there at 11:45, and it was after they had eaten lunch and about to pay their fare before they ever saw Quinn, at the little cafe, the Busy Bee,He says that they saw Quinn over at the factory before 12, as I understood it."

" Mr. Dorsey: Yes sir, by his evidence".

". Mr. Arnold: That's absolutely incorrect, they never saw Quinn there then, and never swore they did."

Mr. Dorsey (resuming): "No, they didn't see him there, I doubt if anybody else saw him there either."

". Mr. Arnold, If a crowd of people here laughs every time we say anything, how are we to hear the Court? He has made a whole lot of little mis-statements, but I let those pass, but I am going to interrupt him on every substantial one he makes He says those ladies saw Quinn, says before 12, and I say he wasn't there, and they didn't say that he was there then."

"The Court: What is it you say, Mr. Doresy?

" Mr. Dorsey, I was arguing to the jury the evidence."

"The Court: Did you make a statement to that effect?"

"Mr. Dorsey, I made a statement that those two young ladies say they met Holoway as he left the factory at 11:05--I make the statements that as soon as they got back down to that Greek cafe, Quinn came in and said to them, 'I have just been in and seen Mr. Frank'".

". Mr. Arnold: They never said that, they said they met Holloway at 11:45, they said at the Busy Bee cafe, but they met Quinn at 12:30"

"Mr. Dorsey, Well, get your record, you can get a record on almost any phase, this busy Quinn was blowing hot and blowing cold, no man in God's world knows what he did say, but I got his affidavit there."

" Mr. Arnold: I have found that evidence, now, Mr. Dorsey, about the time those ladies saw Quinn."

". Mr. Doresy: I'll admit he swore both ways"

". Mr. Arnold, No, he didn't either. I read from the evidence of Miss Corinthia Hall; Then Mr. Dorsey asked her: 'Then you say you saw Lemmie Quinn right at the Greek cafe at five minutes to twelve, something like that? A. No sir, I don't remember what time it was when I saw him, went into the cafe, ordered sandwiches and a cup of coffee, drank the coffee and when we were waiting on the change he came in'. And further on, 'All he said (Quinn) was he had been up and had seen Mr. Frank, that was all he said? A. Yes sir', and so on. Now the evidence of Quinn: 'What sort of clock was that? 'he's telling the time he was at DeFoor's pool parlor--'What sort of clock was that?" A Western Union clock. Q. What did the clock say when you looked at it? A. 12:30'. And he also swore that he got back to the pencil factory at 12:30, that's in a half dozen different places".

"The Court: Anything contrary to that record. Mr. Dorsey?

". Mr. Dorsey: Yes, sir, I'm going to show it by their own table that didn't occur-- that don't scare anybody and don't change the facts."

The Court erred, under the foregoing facts, in not restraining

the solicitor general from making the erroneous statements of fact objected to by the defendant's counsel which the evidence did not authorize, and in permitting him to proceed, and in not rebuking the Solicitor General, and in not stating to the jury that there was no such evidence as the Solicitor General had stated, in the case, and defendant says that for this improper argument, and for this failure of the Court, there should be granted a new trial.

97. Movant further says that a new trial should be granted because of the following:

In his concluding argument Solicitor General Dorsey, referring to the defendant's wife, and referring to the claim made by the Solicitor General that the defendant's wife had not visited him for a certain time after he was first imprisoned, told the jury:

" Do you tell me that there lives a true wife, conscious of her husband' innocence, that wouldn't have gone through snapshotters, reporters and everything else, to have seen him"--

Whereupon the following colloquy ensued.

"Mr. Arnold. I must object to as unfair and outraheous an argument as that that his wife didn't go there through any consciousness of guilt on his part, I have sat here and heard the unfairest argument I have ever heard, and I can't object to it, but I do object to his making any allusion to the failure of the wife to go and see him; it's unfair, it isn't the way to treat a man on trial for his life".

"The Court: Is there any evidence to that effect?

"Mr. Dorsey: Here is the statement I have read."

"Mr. Arnold: I object to his drawing any conclusions from his wife going or not going, one way or the other,- it's an outrage upon law and decency and fairness."

" The Court, Whatever was in the evidence or the statement I must allow it."

Mr. Dorsey, (resuming): "Let the galled jade wince"

"Mr. Arnold: I object to that, I'm not a 'galled jade', and I've got a right to object. I'm not galled at all, and that statement is entirely uncalled for."

"The Court: He has got the right to interrupt you".

" Mr. Dorsey: You've had your speech".

". Mr. Rosser: And we never had any such dirty speech as that either".

". Mr. Dorsey: I object to his remark, Your Honor, I have a right to argue this case."

". Mr. Rosser: I said that remark he made about Mr. Arnold, and Your Honor said it was correct: I'm not criticising his speech I don't care about that."

Mr. Dorsey (resuming): "Frank said that his wife never went back there because she was afraid that the snapshotters would get her picture,-because she didn't want to go through the line of snapshotters. I tell you, gentlemen of the jury, that there never lived a woman, conscious of the rectitude and innocence of her husband, who wouldn't have gone to him through snapshotters, reporters and advice of any Tabbi under the sun. And you know it."

Movant says that the Court erred in not taking positive action, under the circumstances aforesaid, and in not restraining the Solicitor General from making his unfounded and unjust inferences from the alleged failure of the defendant's wife to visit him, which was not authorized by the evidence in the case, and erred in allowing the Solicitor General to argue upon this subject at all, and erred in not admonishing the jury that such argument could not be considered and should have no weight with the jury and the Court erred in not rebuking the Solicitor General for making the reply which he made to the interruption, to the effect "Let the galled jade wince", and erred in not rebuking the Solicitor General for such unjust comments upon a merited interruption, and because of such failures of the Court, and because of the aforesaid erroneous, unjust and unfounded argument of the Solicitor General, movant says that a new trial should be granted.

98. Movant says that a new trial should be granted because of the following:

The Solicitor General, in his concluding argument to the jury, sopke as follows:

"If there be a negro who accuses me of a crime of which I am innocent, I tell you, and you know It's true.

I'm going to confront him, even before any attorney, no matter who he is, returns from Tallulah Falls, and if not then, I tell you just as soon as that attorney does return, I'm going to see that that negro is brought into my presence, and permitted to set forth his accusations. You make much here of the fact that you didn't know what this man Conley was going to say when he got on the stand. You could have known it, but you dared not do it."

Whereupon the following colloquy ensued:

". Mr. Rosser: May it please the Court, that's an untrue statement; at that time, when he proposed to go through that dirty farce, with a dirty negro, with a crowd of policemen, confronting this man, he made his first statement, his last statement, he said, and these addedas, nobody ever dreamed of them and Frank had no chance to meet them; that's the truth.

You ought to tell the truth; if a man is involved for his life; that's the truth".

Mr. Dorsey (resuming): It don't make any difference about your addendas, and you may get up there just as much as youwant to, but I'm going to put it right up to this jury----

"Mr. Rosser: May it please the Court, have I got the right to interrupt him when he misstates the facts?"

"The Court: Whenever he goes outside of the record".

"Mr. Rosser: Has he got the right to comment that Ihaven't exercised my reasonable rights?"

"The Court: No sir, not if he has done that/"

" Mr. Rosser, Nobody has got a right to comment on the fact that I have made a reasonable objection".

"Mr. Dorsey: But I'm inside of the record, and you know it, and the jury knows it. I said, may it please Your Honor, that this man, Frank, declined to be confronted by this man, Conley".

"Mr. Rosser: That isn't what I objected to, he said that at that meeting that was proposed by Conley, as he says, but really proposed by the detectives when I was out of the City, that if that had been met, I would have known Conley's statement, and that's not true, I would not have been any wiser about his statement than I was here the other day."

"The Court: You can comment upon the fact that he refused to meet Frank or Frank refused to meet him, and at the time he did it, he was out of the City".

"Mr. Arnold: We did object to that evidence, Your Honor, but Your Honor let that in".

"The Court: I know; go on".

Mr. Dorsey (resuming): "They see the force of it"--

".. Mr. Rosser: Is that a fair comment, Your Honor, if I make a reasonable objection, to say that we see the force of it?"

"The Court: I don't think that, in reply to your objection is a fair statement".

Mr. Dorsey, (resuming(Now, may it please Your Honor, if they don't see the force of it, you do".

". Mr. Rosser. I want to know, is Your Honor's ruling to be absolutely disregarded like that?"

"The Court: Mr. Dorsey, stay inside of the record, and quit commenting on what they say and do."

"Mr. Dorsey: I am inside of the record, and Your Honor knows that's an entirely proper comment."

"Mr. Rosser, Your Honor rules--he says one thing and then says Your Honor knows better..

"Mr. Dorsey: Your Honor knows I have got a right to comment on the conduct of this defendant."

"The Court, Of course you have, but when they get up and object, I don't think you have any right to comment on their objections as they are making them to the Court"

"Mr. Dorsey: I dont?"

"The court: No, I don't think so."

"Mr. Dorsey: Isn't everything that occurs in the presence of the Court the subject matter for comment?"

"The Court: No, I don't think you can comment on these things. You can comment on any conduct within the province of this trial, but if he makes an objection that's sustained, why, then you can't comment on that".

". Mr. Dorsey: Does your Honor say I'm outside of the record?

"The Court, No, I don't, but I say this, you can comment on the fact that Frank refused to meet this man, if that's in

the record, you have the right to do that".

Mr. Dorsey (resuming): "This man Frank, with Anglo-Saxon blood in his veins, a graduate of Cornell the superintendent of the pencil factory, so anxious to ferret out this murder that he 'phoned Schiff three times on Monday, April 28th, to employ the Pinkerton Detective Agency, this man of Anglo-Saxon blood and intelligence, refused to meet this ignorant negro, Jim Conley. He refused upon the flimsy pretext that his counsel was out of town but when his counsel returned, when he had the opportunity to know at least something of the accusations that Conley brought against this man, he dared not let him meet him".

Movant says that Court erred in allowing the Solicitor General to comment upon an alleged failure of the defendant to meet the witness Conley and erred, when the defendant's counsel objected and interrupted him, the same not being authorized by the evidence and erred in not stopping the Solicitor General, and erred in not making a decisive and unequivocal ruling that such comment was improper, and should not influence the jury, and further erred in allowing the Solicitor General to comment, as he did in the foregoing statement of facts, upon the interruption; and the Court expressly erred in ruling that the Solicitor General could comment upon the fact that Frank refused to meet Conley; and because of such failure and errors on the Court's part, and because of such improper and prejudicial argument by the Solicitor General, the movant says that a new trial should be granted him.

99. Movant further says that a new trial should be granted because of the following:

The Solicitor General in his concluding argument, referring to the visit of the defendant to Bloomfield's undertaking establishment, on April 27, made the following remarks to the jury".

"Frank says that he visited the morgue not only once but twice. If he went down there and visited that morgue, and saw that child and identified her body, and it tore him all to pieces, as he tells you it did, let any honest man, I don't care who he be, on this jury, seek to fathom the mystery of this thing: tell me why it was, except for the answer I give you, he went down there to view that body again. Rogers says he didn't look

at it. Black says he didn't see him look at it".

Whereupon the following occurred:

". Mr. Rosser, He is mistating the evidence. Rogers never said he didn't look at the body, he said he was behind him, and didn't know whether he did or not; and Black says he didn't know whether he did or not."

". Mr. Dorsey: Rogers said he never did look at that body".

". Mr. Arnold: I insist that isn't the evidence. Rogers said he didn't know, and couldn't answer whether he saw it or not and Black said the same thing".

Mr. Dorsey (resuming) : "I am not going to quibble with you. The truth is, and you know it, that when that man Frank went down there to look at that body of that poor girl, to identify her, that he never went in that room, and if he did look at her long enough to identify her, neither John Black nor Rogers nor Gheesling knew it. I tellyou, gentlemen of the jury, that the truth of this thing is that Frank never looked at the body of that poor girl, but if he did, it was just a glance, as the electric light was flashed on and immediately turned and went into another room".

"Mr. Rosser: There isn't a bit of proof that he went into another room, I object again, sir, there isn't a particle of proof of that".

" The Court: Look it up and see what was said".

" Mr. Dorsey: I know this evidence".

". Mr. Rosser: If your Honor allows it to go on, there's no use looking it up. He never said anything about going into another room"

"The Court: What is your remembrance about that."

Mr. Rosser: It isn't true. Your Honor."

"Mr. Dorsey: I challenge you to produceit"

"Mr. Rosser: There's no use to challenge it, if he goes on and makes the argument they make, these deductions for which there's no basis, but when he makes a mis-statement of the evidence, it's perfectly useless to go on and look it up, and we decline to look it up".

Mr. Dorsey: I insist that they look it up. I insist that I'm sticking to the facts".

Mr. Rosser: No you are not".

"The Court: Well, if you'll give me the record, I'll look it up. Mr. Haas, look that up, and see what is the fact about it".

"Mr. Dorsey: I know what Boots Rogers said myself".

"The Court: The jury knows what was said ".

"Mr. Dorsey: That's quibbling".

"Mr. Arnold: Is that correct, Your Honor?"

"The Court: No, that's not correct; whenever they object, Mr. Dorsey, if you don't agree upon the record, have it looked up, and if they are right and you know it, and you are wrong, or if they are wrong and you also know it, if they are wrong they are quibbling, and if they are right they are not quibbling. Now, just go on".

". Mr. Rosser: Now, the question of whether Boots said he went into that room is now easily settled". Mr. Rosser here read that portion of the cross examination of the witness Rogers stating that when Frank left the door of the undertaking room, he went out of his view.

Mr. Dorsey: Well, that's cross examination, aint it?"

"Mr. Rosser, Yes, but I presume he would tell the truth on cross examination, I don't know; he passed out of his view, he didn't say he went into a room".

"Mr. Dorsey: Correct me if I'm wrong. Boots Rogers said he didn't go where the corpse lay, and that's the proposition we lay down."

Mr. Rosser: That isn't the proposition either; now you made a statement that isn't true, the other statement isn't true Rogers said, that when he left 'he went out of my view', he was practically out of his view all the time. I was just trying to qoute the substance of that thing".

Mr. Dorsey, (resuming): "He wanted to get out of the view of any man who represented the majesty and dignity of the law, and he went in behind curtains or any old thing that would hide his countenance from these men. And he said on the leading examination"

"Mr. Rosser, I don't know what you led out of him, but on the cross he told the truth".

Movant shows that under the foregoing facts, the Court erred in not making any ruling at all, and erred in allowing the

Solicitor General to proceed with his illegal argument which was not founded on the evidence, and erred and in not rebuking the Solicitor General, and in not stating to the jury that the Solicitor General had mis-stated the evidence in the particulars objected to, and erred in not telling the jury that there was no evidence in the case that Rogers had sworn that defendant did not look at the body of Mary Phagan or that Frank went in another room, and because of the aforesaid errorsin acting and failing to act, on the part of the Court, and because of such illegal and improper argument of the Solicitor General a new trial should be granted.

100. Movant further says that a new trial should be granted because of the following.

The Solicitor General, in his concluding argument, spoke as follows to the jury, the subject under discussion being the whereabouts of the key to the elevator box on Sunday morning, April 27, the language of the Solicitor General being as follows

" Why don't they bring the fireman here who went around and gave such instructions? First, because it wasn't necessary, they could have cut the electricity off and locked the box. And second, they didn't bring him because no such man ever did any such thing, and old Holloway told the truth before he came to the conclusion that old Jim Conley was his nigger, and he saw the importance of the proposition that when Frank went there Sunday morning the box was unlocked and Frank had the key in his pocket".

Whereupon the following occurred:

"Mr. Rosser: You say Mr. Frank had the key in his pocket? No one mentioned it, that isn't the evidence: I say it was hung up in the office, that's the undisputed evidence".

"Mr. Dorsey, Holloway says when he got back Monday morning it was hung up in the office, but Boots Rogers said this man Frank--and he was sustained by other witnesses-when he came there to run that elevator Sunday monring, found that power box unlocked."

"Mr. Rosser, That's not what you said".

"Mr. Dorsey: Yes, it is".

"Mr. Rosser: You said Frank had the key in his pocket next

morning, and that isn't the evidence, there's not a line to that effect."

"The Court: Do you still insist that he had it in his pocket?"

"Mr. Dorsey: I don't care anything about that; the point of the proposition, the gist of the proposition, the force of the proposition is that old Holloway stated, way back yonder in May, when I interviewed him, that the key was always in Frank's office; this man told you that the power box and the elevator was unlocked Sunday morning and the elevator started without anybody going and getting the key".

"Mr. Rosser: That's not the point he was making; the point he was making, to show how clearly Frank must have been connected with it, he had the key in his pocket. He was willing to say that, when he ought to know that's not so."

"The Court: He's drawing a deduction that he claims he's drawing".

"Mr. Rosser: He doesn't claim that. He says the point is it was easily gotten in the office, but that's not what he said."

"The Court: You claim that's a deduction you are drawing?"

"Mr. Dorsey: Why, sure".

"The Court, Now, you don't claim the evidence shows that?"

"Mr. Dorsey: I claim that the power box was standing open Sunday morning".

"The Court: Do you insist that the evidence shows he had it in his pocket?"

"Mr. Dorsey: I say that's my recollection, but I'm willing to waive it, but let them go to the record, and the record will sustain me on that point, just like it sustains me on the evidence of this man Rogers, which I'm now going to read."

Movant says that the Court erred in not rebuking the Solicitor General for the foregoing improper argument, which was not ~~[illegible]~~ evidence, and erred in not stating to the jury that there was no evidence that Frank had the key in his pocket, and in allowing the Solicitor General to proceed unrebuked and uninterrupted with said illegal argument, and in not making a square

and decisive ruling, upon the objection of the defendant, and in allowing the Solicitor General to proceed with said claim that Frank had the key in his pocket, as a deduction, the same being totally unwarranted; and for said illegal and erroneous actions and failure to act, by the Court, and for said illegal and improper argument, a new trial should be granted.

101. Movant says that a new trial should be granted, because of the following:

The Solicitor General, in his concluding argument, in referring to the testimony of the physicians introduced by the defendant, spoke as follows:

" It wouldn't surprise me if these able, astute gentlemen, vigilant as they have shown themselves to be, didn't go out and get some doctors who have been the family physicians and who are well known to some of the members of this jury, for the effect it might have upon you".

Whereupon the following colloquy occurred.

". Mr. Arnold, Ther's not a word of evidence as to that, that's a grossly improper argument, and I move that that be withdrawn from the jury".

"Mr. Dorsey: I don't state it as a fact, but I am suggesting it."

"Mr. Arnold, He has got no right to deduct it or suggest it, I just want Your Honor to reprove it, —reprimand him and withdraw it from the jury, I just make the motion, and Your Honor can do as you please".

Mr. Dorsey (resuming); "I am going to show that there must have been something besides the training of these men, and I'm going to contrast them with our doctors."

". Mr. Arnold: I move to exclude that as grossly improper. He says he's arguing that some physician was brought here because he was the physician of some member of the jury, it's grossly unfair and it's grossly improper and insulting even, to the jury".

Mr. Dorsey: I say it's eminently proper and absolutely a legitimate argument".

"Mr. Arnold: I just record my objection, and if your honor let's it stay in, you can do it." 168.

". Mr. Dorsey: Yes sir: That wouldn't scare me, Your Honor."

"The Court: Well, I want to try it right, and I suppose you do, Is there anything to authorize that inference to be drawn?"

". Mr. Dorsey: Why, sure, why the fact that you went out and got general practitioners, that know nothing about the analydis of the stomach, know nothing about pathology".

"The Court, Go on, then"

"Mr. Dorsey: I thought so."

". Mr. Arnold: Does Your Honor hold that is proper,'I thought so?'"

"The Court: I hold that he can draw any inference legitimately from the testimony and argue it, I don't know whether or not there is anything to indicate that any of these physicians was the physicians of the family".

"Mr. Rosser, Let me make the suggestion, Your Honor ought to know that before you let him testify it."

"The Court: He says he don't know it, he's merely arguing it from an inference he has drawn."

Mr. Dorsey (resuming): "I can't see any other reason in God's world for going out and getting these practitioners, who have never had any special training on stomach analysis, and who have not had any training with the analysis of tissues, like a pathologist has had,except upon that theory."

Movant shows that the Court erred in not rebuking the Solicitor General for making such improper argument which was not authorized by the evidence and in not stating to the jury that there was not a particle of evidence to the effect that any of the physicians were family physicians of any of the jurors, or that any of the physicians were put upon the stand for the effect it might have upon them for such reason; and the Court erred in allowing the Solicitor General to proceed with such improper, unwarranted and highly prejudicial argument, and erred in allowing the Solicitor General to comment, as the foregoing colloquy shows, upon the well merited interruptions by defendant's counsel, for such erroneous actions and failures to act by the Court, and for such illegal, unfounded and prejudicial argument, the defendant says that a new trial should be granted.

102. Movant further says that a new trial should be granted

because of the following:

The Solicitor Ganeral in his concluding argument, in referring to act of Judge Roan, discharging the witness, Conley, from custody, stated:

"Judge Roan did it, no reflection on the Sheriff, but with the friends of this man Frank, pouring in there at all hours of the night, offering him sandwiches and whiskey and threatening his life, things that this Sheriff, who is as good as the Chief of Police but no better, couldn't guard against because of the physical structure of the jail, Jim Conley asked, and His Honor granted the request, that he be remanded back into the custody of the honorable men who manage the police department of the City of Atlanta,".

Whereupon the following occurred:

"Mr. Rosser, No, that's a mistake, that isn't correct, Your Honor discharged him from custody, he said that under that petition Your Honor sent him back to the custody where you had him before, and that isn't true, Your Honor discharged him vacated the order, that's what you did."

". Mr. Dorsey, Here's an order committing him down there first you are right about that, I'm glad you are right one time".

". Mr. Rosser, That's more than you have ever been ".

Mr. Dorsey (resuming): "No matter what the outcome of the order may have been, the effect of the order passed by his His Honor, Judge Roan, who presides in this case, was to remand him into the custody of the police of the City of Atlanta".

"Mr. Rosser, I dispute that, that isn't the effect of the order passed by His Honor, the effect of the order passed by his Honor was to turn him out, and they went through the farce of turning him out on the street and carrying him right back That isn't the effect of Your Honor's judgment. In this sort of case, we ought to have the exact truth".

"The Court, This is what I concede to be the effect of that ruling, I passed this order upon the motion of State's counsel first, is my recollection, and by consent of Conley's atty."

"Mr. Rosser, I'm asking only for the effect of the last one".

"The Court.On motion of State's counsel, consented to by Conley's attorney, I passed the first order, that's my recollection

Afterwards, it came up on motion of the Solicitor General, I vacated both orders, committing him to the jail and also the order, don't you understand, transferring him; that left it as though I had never made an order, that's the effect of it."

Mr. Rosser: Then the effect was that there was no order out at all? "

"The Court, No order putting him anywhere" ". Mr. Rosser: Which had the effect of putting him out?"

"The Court; Yes, that's the effect, that therewas no order at all".

Mr. Dorsey (resuming) "First, there was no order committing him to the common jail of Fulton County; second, he was turned over to the custody of the police of the City of Atlanta, by an order of Judge L. S. Roan, Third, he was released from anybody's custody, and except for the determination of the police force of the City of Atlanta, he would have been a liberated man, when he stepped into this Court to swear, or he would have been spirited out of the State of Georgia, so his damaging evidence couldn't have been adduced against this man".

The Court erred in allowing the Solicitor General to make the foregoing argument, over objection, which was not authorized by the evidence, and in not rebuking and correcting the Solicitor-General, and because of such failure to act, and erroneous actions, by the Court, and because of such improper and illegal argument, movant says a new trial should be granted.

103. Because the Court erred in failing to charge the jury, in reference to the witness, Jim Conley, that if the witness wilfully and knowingly swore falsely as to a material matter, his testimony ought to be disregarded entirely, unless corroborated by the circumstances, or the testimony of other unimpeached witnesses.

[illegible] believed from the evidence, that Conley watched for Frank, and that his purpose in watching was to assist in the commission of the crime of sodomy by Frank upon the person of Mary Phagan, sodomy being a felony, that than, Conley as to any alleged murder

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committed in the progress of any such attempt to commit sodomy, would be an accomplice; and the jury could not give credit to his testimony, unless corroborated by the facts and circumst ances, or by another witness.

Rosser and Brandon,

Herbert J. Haas,

Reuben R. Arnold,

Movants Attorneys

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EXHIBIT A.

GEORGIA,

DOUGHERTY COUNTY.

The State of Georgia, () Indictment For Murder.

Vs. () In Superior Court Fulton County

Leo M. Frank. (). Georgia, Motion for New Trial.

:----:

Before me personally appeared R. L. Gremer, who being duly sworn deposes and says that he makes this affidavit to be used on the motion for new trial in the above case.

Further deposing he says that he is a resident of Albany, Ga., that he is acquainted with Mack Farkas, who works with Mr. Sam Farkas, who operates a livery stable and sale barn in Albany.

Further deposing,he says that between the time of the murder of Mary Phagan, and the trial of Leo M. Frank, the exact date this deponent cannot state, deponent was standing in front of Mr. Sam. Farkas's place of business on Broad street in Albany, in the presence of Mack Farkas and others, including a party by the name of A. H. Henslee; said Henslee is the same party whose picture appears on page 2 of the Atlanta Georgian issue of August 26th, and on page 2 of the issue of the same paper of August 23rd, as a juror in the Frank case.

At said time and place, deponent heard the said Henslee express his conviction that Frank was guilty of the murder of Mary Phagan; his exact language was "there can be no doubt that Frank is guilty. I know he is guilty", referring to the murder of Mary Phagan.

Further deposing he says he stated to said Henslee "It is queer that a man of Frank's standing could be guilty of such a crime". Henslee said "without a doubt he is guilty" Deponent said what do you mean by "without a doubt"? Henslee said POSITIVELY "without a doubt to my mind or, to any one else."

R. L. Gremmer.

Sworn to and subscribed before me,

Sept 4th, 1913.

L. L. Ford, 173.

N. P. Dougherty County Ga. (N. P. Seal.)

L. L. Ford.

R. L. Gremmer

L. S. Roan, Judge.

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EXHIBIT B.

GEORGIA,

DOUGHERTY COUNTY.

STATE OF GEORGIA, (). Indictment for Murder.

Vs, (). In superior Court Fulton County

Leo M. Frank. (). Georgia, Motion for New trial

:--------:

Before me, personally appeared Mack Farkas, who being duly sworn makes this affidavit, to be used on the motion for a new trial in the above case.

Deposing, he says that he is a resident of Albany, Ga., and is connected with Sam Farkas, Esq., who runs a livery stable and sale barn in Albany; further deposing he said that between the time of the murder of Mary Phagan, and the trial of Leo M. Frank, he heard a party discussing the case in front of the place of business of the said Sam Farkas, in Albany, Ga., in the presence of this deponent and others, including one R. L. Gremer, also a resident of Albany, Ga., said party, whom this deponent recollects as being named Henslee, and whose picture appears on page 2 of the Atlanta Georgian of August 23rd, and on page 2 of the Atlanta Georgian of August 26th, as being one one of the Frank jury, expressed himself as being convinced of Leo M. Frank's guilt of the murder of Mary Phagan; the exact language used by said party, deponent does not recollect, but his recollection is that he used the words "I believe Frank is guilty" referring to the murder of Mary Phagan.

L. D. Roan, Judge.

Mack Farkas.

Sworn to and subscribed before me,

this September 4, 1913.

L. L. Ford, Notary Public Dougherty, County Ga.

(N. P. Seal.)

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EXHIBIT C.

GEORGIA, FULTON COUNTY.

State of Georgia, (). Fulton Superior Court.

Vs.

Leo M. Frank.

Personally appears Julian A. Lehman, who being duly sworn makes this affidavit to be used on the motion for new trial in the above case.

Further deposing he says that he is personally acquainted with A. H. Henslee, one of the jurors in the above case; that on June 2, 1913, between Atlanta, Ga., and Experiment, Ga., the said Henslee expressed his opinion that Frank was quilty of the murder of Mary Phagan, and that this was in deponent's presence and hearing; and in the hearing of other persons on the train at the time; the words used to the best of deponent's knowledge and recollection were "Frank is as guilty as a damned dog, and ought to have his God damned neck broke"; this was in reference to Leo M. Frank, and before the trial.

Again on June 20, 1913, the said Henslee made practically the same statement of and con cerning the connection of Leo M. Frank with the murder of Mary Phagan in deponent's hearing.

On both occasions the said Henslee showed great feeling, he expressed the aforesaid conviction firmly and positively and vehemently.

Julian A. Lehman,

Sworn to and subscribed before me,
this the 12th day of Sept., 1913.
Robt. C. Patterson,
Notary Public Fulton County, Ga.

L. S. Roan, Judge.

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EXHIBIT D.

STATE OF GEORGIA,
COUNTY OF FULTON.

State of Georgia,

Vs. In Fulton Superior Court.

Leo M. Frank.

Before me, the undersigned officer authorized by law to administer oaths, personally appeared Samuel Aron, who being first duly sworn, deposes and says on oath as follows:

Deponent says that just after the indictment of Leo M. Frank for murder, as near as he can recall about two days after the indictment, this deponent was at the Elks Club on Ellis Street, Atlanta, Georgia, ~~that at~~ that time he saw one A. H. Henslee, not then known to this deponent by name, but now known and recognized by this deponent as one of the jurors who tried the Frank case and returned ~~a~~ verdict of guilty; said A. H. Henslee was at said Elks Club at the time mentioned, and made this statement in this deponent's hearing: "I am glad that they indicted the God damned Jew. They ought ~~to take him out and~~ lynch him" and if I got on the jury I'd hang that jew sure This statement was made in connection with the indictment of Leo M. Frank for the murder of Mary Phagan, and made in this deponent's hearing by the said A. H. Henslee, who afterwards served on said jury and brought in a verdict of guilty.

At this time this deponent left the Club, not caring to get into the argument, which was becoming heated and which was very condemnatory of Leo M. Frank by the said A. H. Henslee.

Samuel Aron.

Sworn to and subscribed before me
this 3rd day of Oct., A. D. 1913.
Robt. C. Patterson,
Notary Public Fulton County, Ga.

L. S. Roan, Judge

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EXHIBIT E.

STATE OF GEORGIA,

COUNTY OF FULTON.

State of Georgia,

vs. Fulton Superior Court.

Leo M. Frank.

Before me personally appear L. Z. Rosser, Morris Brandon, R. R. Arnold and H. J. Haas, who, being duly sworn, deposes and says that they are the sole counsel of defendant in the above case, and they make this affidavit to be used as evidence on the motion for new trial in said case.

Further deposing they say that, since the trial of said case and the verdict and sentence therein, it has come to their knowledge that two of the jurors who sat on said case, to-wit M. Johenning and A. H. Henslee, were prejudiced, partial and biased against Leo M. Frank, the defendant as evidence by affidavits attached to motion and hereinafter referred to; that said prejudice, partiality and bias were present on their part, when said Johenning and Henslee qualified as jurors in said case as shown by said affidavits, but that the facts were unknown to these deponents at the time of the trial of said case, and at the time said jurors qualified on the voir dire of said case, and these deponents had no means of knowing said facts until after said trial.

Further deposing, they say that not until after the trial of said case did they know or have any means of knowing that said Johenning and Henslee or either of them, had made any statement of any kind to, or in the presence of, any of the following persons, to-wit: H. C. Levenhart, Mrs. J. G. Lovenhart, Miss Mariam Lovenhart, S. Aron, Mack Farkas, R. L. Grener, Jno. M. Holmes, Shi. Gray, S. M. Johnson, J. J. Nunnally, W. L. Ricker, J. A. Lehman, C. P. Stough or any other person, of and ~~connecting~~ concerning said Leo Frank in connection with the murder of Mary Phagan, or in connection with said trial, or the possible outcome of said trial.

Further deposing they say that they have been guilty of no laches in this matter, but that they have used every means of

L. Z. Rosser, Judge.

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obtaining the facts in connection with statements made by said persons, and all of them, and all of said statements have come to their knowledge since the rendition of the verdict and sentence in said case, as is shown by the dates mentioned in the jurats to each affidavit, and deponents have brought same to the attention of the Court at the earliest possible moment at which the Court could take cognizance of said affidavits after the trial, which is the date on which the rule ni si is on return; that is, October 4, 1913, same being on that day presented to the Court as part of the motion for new trial.

Further deposing, deponents say that, had they known at the trial of any of the facts or statements of the jurors, which would disqualify, or tend to disqualify said jurors, or either of them, when said jurors were put upon the voir dire in said case, these deponents would have brought the same to the attention of the Court at said time.

L. Z. Rosser,

Morris Brandon,

Reuben R. Arnold,

Herbert J. Haas.

Sworn to and subscribed before me, by each of the above four named deponents, this October 22n, 1913.

E. D. Thomas,

Notary Public Fulton County, Ga.

L. S. Roan, Jud Sc.

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EXHIBIT F.

GEORGIA, FULTON COUNTY

State of Georgia,

Vs. Fulton Superior Court.

Leo M. Frank.

Personally appeared Mrs. Jennie G. Loevenhart, who makes this affidavit to be used on motion for a new trial in the above stated case.

Deposing on oath she says that she is personally acquainted with M. Joehenning, one of the jurors who served in the trial of Leo M. Frank, for murder of Mary Phagan.

Further deposing she says that during May 1913, said M. Joehenning met deponent and deponent's daughter on Forsyth Street Atlanta, Georgia, and then and there the said M. Joehenning expressed to the deponent and deponent's daughter his firm belief that Leo M. Frank, was guilty of the murder of Mary Phagan This statement was made by M. Joehenning forceably and positively and as his profound conviction.

Mrs. Jennie G. Loevenhart.

Sworn to and subscribed before me,
this 2nd day of September 1913.
C. W. Burke,
Notary Public Fulton County, Georgia.

L. S. Roan Judge

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EXHIBIT F.

GEORGIA, FULTON COUNTY

State of Georgia,

Vs. Fulton Superior Court.

Leo M. Frank.

Personally appeared Mrs. Jennie G. Loevenhart, who makes this affidavit to be used on motion for a new trial in the above stated case.

Deposing on oath she says that she is personally acquainted with M. Joehenning, one of the jurors who served in the trial of Leo M. Frank, for murder of Mary Phagan.

Further deposing she says that during May 1913, said M. Joehenning met deponent and deponent's daughter on Forsyth Street Atlanta, Georgia, and then and there the said M. Joehenning expressed to the deponent and deponent's daughter his firm belief that Leo M. Frank, was guilty of the murder of Mary Phagan This statement was made by M. Joehenning forceably and positively and as his profound conviction.

Mrs. Jennie G. Loevenhart.

Sworn to and subscribed before me,
this 2nd day of September 1913.
C. W. Burke,
Notary Public Fulton County, Georgia.

L. S. Roan, Judge

179.

000261

EXHIBIT-G.

GEORGIA, FULTON COUNTY.

State of Georgia,

Vs. Fulton Superior Court.

Leo M. Frank,

Before me personally appeared H. C. Loevenhart, who makes this affidavit to be used on motion for a new trial in the above stated case.

Deposing on oath he says that for some eighteen months prior to July 1913 he was connected with the Hodges Broom Works in the City of Atlanta; that he is personally acquainted with M. Joehenning one of the jurors in the above stated case, and that during the month of May 1913 said M. Johenning had a conversation with this deponent, in which he discussed the death of little Mary Phagan.

Further deposing he says that in said conversation the said juror, M. Johenning, expressed his opinion to deponent that Frank was guilty of the murder of Mary Phagan, and that it was his profound conviction.

H. C. Loevenhart.

Sworn to and subscribed before me,
this 2nd day of September, 1913.
C. W. Burke,
Notary Public Fulton County, Ga.

L. S. Roan, Judge.

180.

000261

EXHIBIT H.

GEORGIA, FULTON COUNTY.

State of Georgia,

Vs. Fulton Superior Court.

Leo M. Frank.

Before me personally appeared Miss Miriam Loevenhart, who makes this affidavit to be used on motion for a new trial in the above stated case.

Deposing on oath she says that she is personally acquainted with M. Joehenning, a juror, who served in the above stated case; she says that prior to the trial of Leo M. Frank, said juror, M. Joehenning, had a conversation with this deponent and deponent's mother, and in their presence expressed his profound conviction that Leo M. Frank was certainly guilty of the murder of Mary Phagan.

Further deposing she says that said M. Joehenning made this statement, positively, almost vehemently, and that his exact language, which was in response to a remark from this deponent in reference to the case was, as near as deponent recalls, "I know that he is guilty", referring to Leo Frank. Said M. Joehenning made this statement more than once to this deponent before the commencement of the trial of Leo M. Frank for murder.

Miriam Loevenhart.

Sworn to and subscribed before me,
this 2nd day of Sept., 1913.
C. W. Burke,
Notary Public, Fulton County, Ga.

L. S. Roan, Judge

181.

000261

EXHIBIT-I.

State of Georgia, (). In Fulton Superior Court
Vs. (). Conviction of Murder.
Leo M. Frank . (). July Term, 1913.
(). Motion for New Trial.

:--------:

GEORGIA, FULTON COUNTY.

Personally came before the undersigned, Leo M. Frank, who upon oath says that he is the defendant in the above stated case, and that his sole counsel in said case were L. Z. Rosser, Morris Brandon, R. R. Arnold and H. J. Haas.

Affiant further says that at and before said trial was entered on, and during the whole of said trial that affiant had no knowledge whatsoever as to M. Johenning and A. H. Henslee, two of the jurors, being prejudiced, partial and biased in said case, as evidence by the affidavits of H. C. Lovenhart, Mrs. J. C. Lovenhart, Miss Marian Lovenhart, S. Aron, Max Farkas, R. L. Grener, John W. Holmes, Shi Gray, S. M. Johnson, J. J. Nunnally, W. L. Ricker, J. A. Lehman and C. P. Stough. Affiant did not know either of said jurors and had never seen or heard of them before.

Further deposing, affiant says that he did not know until after the trial, and did not have means of knowing until after said trial, that said Johenning and said Henslee, or either of them, had made any statement of any kind to or in the presence of any of the persons hereinbefore named. Affiant further says that before said trial, at the time of entering upon said trial, and during said trial, he had no knowledge or means of knowing that said persons were prejudiced, partial or biased as is shown by the affidavits or depositions of the persons named, and the facts stated in said affidavits and depositions were unknown to this affiant until after the verdict and sentence in said case. He further says that he has been guilty of no laches in this matter, and has, together with his counsel used all the means at hand to obtain the facts and circumstances in connection with the statements made by said parties and all of them. The

L. S. Roan, Judge

said facts were discovered after the verdict and sentence of the court in the case above stated, and the affidavits of said witnesses were taken on the dates shown in the jurat to each affidavit, and the same are brought to the attention of the court by being presented on the day for the return of the rule nisi, which is October 4th, 1913, and which is the earliest time at which such affidavits could be brought to the attention of the court.

Affiant further says that had he known at the trial of any facts or statements which would disqualify, or tend to dispualify said jurors, or either of them, when said jurors were upon their voir dire in said case, that this affiant would have had his counsel bring the same to the attention of the Court promptly at that time.

Leo M. Frank.

Sworn to and subscribed before me,
this 3 day of October, 1913.
Sam A. Boostin,
Notary Public Fulton Co., Georgia.

L. S. Roan, Judge.

000261

E X H I B I T -J.

GEORGIA, FULTON COUNTY.

State of Georgia, (). No. .....

Vs. (). Fulton Superior Court.

Leo M. Frank, ().

:----------:

Personally appears W. P. Neill who makes this affidavit to be used on a motion for new trial in the above stated case.

Deposing he says on oath that he was present in the court - room during the trial of Leo M. Frank, for the murder of Mary Phagan, for two full days during the trial and from time to time on other days; that at the time of the facts hereinafter stated, deponent was sitting just where the jury passed by going from the jury box to the rear end of the court room, he was sitting on the front row of the spectators benches.

During the course of the trial deponent saw the jury pass to the jury box from the rear of the court room, the jury passed immediately by this deponent and also by a man, whose name is unknown to this deponent but who was a spectator in the court room, who was sitting about three feet from this deponent, just across an isle, no one being between this man and deponent; as the jury passed this man, at the time specified, this man took hold of one of the jurors, he took the juror by the hand with one hand and grasped his arm with the other hand and made a statement to him, said something to the juror which this deponent did not understand sufficiently to be able to quote, but this deponent says that he made some statement to the juror while he had thus him by the hand and arm.

Further deposing he says that this act was witnessed by Plennie Minor, so that deponent believes, for the reason that as soon as this happened, the said Plennie Minor immediately came back to this man and threatened to put him out of the court. Plennie Minor told this man that he, Plennie Minor, saw him, the man, take the juror by the hand and say something to him; the man remonstrated with Plennie Minor, and this deponent

L. S. Roan, Judge

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heard plennie Minor repeat to him that he. Plennie Minor, saw him the man, speak to the juror.

Deponent further says that on two occasions, while he was sitting in the court room at the trial, at on time while he was about six to ten feet from the jury, this deponent heard shouts and cheering on the outside of the house from the crowds collected outside. One of said times were during Dorsey's speech.

While this deponent does not say whether or not the jury heard this cheering, he does say that he, the deponent, heard it, plainly and distinctly and was within a few feet of the jury at the time he heard it.

W. P. Neill,

Sworn to and subscribed before me,
this September 9, 1913.
Virlyn B. Moore,
Notary Public Fulton County, Ga.

E. D. Ryan, Judge

Further deposing he says thaton an occasion he heard cheering in the Court room; the Judge said that unless the cheering stopped he would have to clear the court room; and to this Deputy Sheriff Minor replied that that would be the only way he could stop the cheering in the Court room.

W. P. Neill

Sworn to and subscribed before me,
this Sept. 9th, 1913.
Virlyn B. Moore,
Notary Public Fulton County, Ga.

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EXHIBIT K.

The State of Georgia, () Fulton Superior Court.

Vs. ()

Leo M. Frank. ()

GEORGIA, FULTON COUNTY.

Personally appeared before the undersigned a Notary Public in and for said county, B. M. Kay, who on oath says that he is a resident of the City of Atlanta, living at #264 S. Pryor St. Deponent says further that on Saturday evening, August 23rd, 1913 about 8 or 8:30 o'clock P. M. he was driving on his father's automobile down South Pryor Street, going south, there being in the automobile with him his mother Mrs. Rose Kay, and his brother Sampson Kay; that as the automobile approached the corner of South Pryor and East Fair Streets, he observed the jurymen in the Frank case turn into South Pryor from the east, out of East Fair Street, and deponent stopped his automobile to look at the jury, and upon doing so noticed that walking alongside the jury were some six or seven other men. Deponent was on the west side of South Pryor Street while the jury in the above entitled case was walking north along the east side of South Pryor St. Deponent's brother Sampson Kay got out of the automobile stating to deponent that he was going to follow the jury.

B. M. Kay.

Sworn to and subscribed before me,
this 4th day September, 1913.
Robt. C. Patterson,
Notary Public Fulton Co. Ga.

L. S. Roan, Judge.

186.

000241

EXHIBIT-L.

The State of Georgia,

Vs. Fulton Superior Court.

Leo M. Frank.

Georgia, Fulton County.

Personally appeared before the undersigned a Notary Public in and for said county Miss Martha Kay, who on oath says that on the last day of the trial of Leo M. Frank, in above stated case, August 25th, 1913, she was present in the court room and when the audience applauded Judge Roan stated to the sheriff that the cheering and demonstrations would have to stop or the court room would have to be cleared, to which the sheriff replied "Your Honor, that is the only way it can be stopped."

Martha Kay.

Sworn to and subscribed before me,
this 3rd day of September, 1913.
Robt. C. Patterson,
Notary Public Fulton County, Ga.

L. S. Roan, Judge

000278

EXHIBIT M.

The State of Georgia,

Vs. Fulton Superior Court.

Leo M. Frank.

GEORGIA, FULTON COUNTY.

Personally appeared before the undersigned a Notary Public in and for said county, Mrs. A. Shurman, who on oath says that on the last day of the trial of Leo M. Frank in above stated case, August 25th, 1913, she was present in the court room and when the audience applauded Judge Roan stated to the sheriff that the cheering and demonstrations would have to stop or the court room would have to be cleared, to which the sheriff replied "Your Honor that is the only way it can be stopped."

Mrs. A. Shurman.

Sworn to and subscribed before me,
this 3rd day of Sept., 1913.
Robt. C. Patterson, Notary Public Fulton County, Ga.

L. S. Roan, Judge.

EXHIBIT N.

The state of Georgia,

Vs. Fulton Superior Court.

Leo M. Frank.

GEORGIA, FULTON COUNTY.

Personally appeared before the undersigned a Notary Public in and for said county Mrs. A. Shurman, who on oath says that she is a resident of the City of Atlanta, living at #240 Central Ave., Deponent says that on Monday mcrning, August 25th, 1913, the last day of the trial of the said Leo M. Frank in the above stated cause, she was present in the court room in company with Miss Martha Kay of #264 S. Pryor Street, before time for court to open; that she saw the jury in said case enter said court room and take their places, and in a few moments Mr. Hugh M. Dorsey, the Solicitor General of said court entered the room, just before he entered the room there was loud cheering in the street immediately outside the court house for "Dorsey", all of which was loud and long continued and plainly audible to any one in the court room; as Mr. Dorsey entered the court room there was also cheering in said court room. There was also applauding in the course of Mr. Dorsey's speech a couple of times on said date.

Mrs. A. Shurman.

Sworn to and subscribed before me,
this 3rd day of Sept., 1913.
Robt C. Patterson. Notary Public, Fulton Co. Ga.

L. S. Roan, Judge.

000271

EXHIBIT O.

The State of Georgia,

Vs. Fulton Superior Court.

Leo M. Frank.

Georgia, Fulton County.

Personally appeared before the undersigned a Notary Public in and for said county Miss Martha Kay, who on oath says that she is a resident of the City of Atlanta, living at #264 S. Pryor street, Deponent says that on Monday morning August 25th 1913, the last day of the trial of the said Leo M. Frank, in the above stated case, she was present in thecourt room in company with Mrs. A. Shurman of #240 Central Ave., before time for court to open, that she saw the jury in said case enter said court room and take their places, and in a few moment Mr. Hugh M. Dorsey, the Solicitor General of said said court entered the room, just before he entered the room there was loud cheering in the street immediately outside the court house for "Dorsey", all of which was loud and long continued and plainly audible to any one in the court room; as Mr. Dorsey entered the court room there was also cheering in said court room. There was also applauding in the course of Mr. Dorsey's speech a couple of times on said date.

Martha Kay.

Sworn to and subscribed before me,
this 3rd day of Sept., 1913.
Robt. C. Patterson,
Notary Public Fulton Co. Ga.

L. S. Ryan, Jud. Ex.

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400271

EXHIBIT P

The State of Georgia,

Vs. Fulton Superior Court.

Leo M. Frank.

State of Georgia,

County of Fulton.

Personally appeared before the undersigned a Notary Public in and for said county, Sampson Kay, who on oath says that he is a resident of the City of Atlanta, living at #264 South Pryor street, Deponent further says that on Saturday evening, August 23rd 1913, about 8 or 8:30 o'clock P. M. he saw the jury in the above entitled case walking along South Pryor Street with a deputy sheriff in front and another walking in the rear of said jury said jury turning into South Pryor Street from East Fair St., and thence up South Pryor Street to the Kimball House. Deponent followed the jury some 15 or 20 feet in the rear thereof, from E. Fair Street up South Pryor St to near the corner of E. Mitchell street and S. Pryor when he passed ahead and waited on the corner of said streets until the jury had passed, and then continued to follow them up to the Kimball House. This deponent says that there were some six or seven men walking alongside the jurymen talking to them all the way from the corner of E. Fair and South Pryor Sts., up to the Union Station just north of corner of East Alabama and S. Pryor Street, when the men left them, and the jury went on and entered the Kimball House through the Wall Street entrance.

Sampson Kay.

Sworn to and subscribed before me,
this 3rd day of Sept. 1913.
Robt. C. Patterson,
Notary Public Fulton County, Ga.

L. S. Roan, Judge

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000201

EXHIBIT Q.

The State of Georgia,

Vs. Fulton Superior Court.

Leo M. Frank.

State of Georgia, Fulton County.

Personally appeared Samuel A. Boorstin, who, being duly sworn, on oath says: That on Friday evening, on the 22 day of August, 1913, at about 5 or 5:30 P. M., he was present at the Court room of Fulton Superior Court, Judge L. S. Roan, presiding during the trial of the State Versus Leo M. Frank; and after adjournment, and when the jury had been taken from the courtroom, and shortly thereafter, the Solicitor General Hugh M. Dorsey, had passed out of the court room, there was a large crowd waiting outside, through which the jury passed, comprising, perhaps, no less than two or three thousand people; that this crowd did tumultuously and noisily applaud and cheer the Solicitor General, and did congregate around the court room on the outside, standing in great numbers, both on the street and on the side walks; that deponent, upon adjournment of court, was walking up Pryor Street from said court room in a northerly direction, and when he reached Pryor and Alabama Sts., he saw two persons peering out of the third floor corner window in the Kimball House, looking in a Southward direction at the large crowd congregated between the Kiser Building and the court house, that, as deponent continued walking northward and reached the restaurant in the Union Car shed, corner Pryor and Wall Sts., he still observed one of the figures in the jury room peering southward, with both hands upon the window sill, whom he recognized as being juror Smith, one of the jurors in the case of the State Vs. Leo M. Frank, then being on trial. The other person, who had his head through the window peering southward, had by this time stuck his head back into the room, and deponent could not tell who he was.

L. S. Roan, Judge

Sam'l. A. Boorstin.

Sworn to and subscribed before
this 3rd day of Oct., 1913.

J. H. Leavitt

Notary Public Fulton County, Ga.

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000211

EXHIBIT R.

State of Georgia, () Superior Court of Fulton County

Vs. () Charged with Murder.

Leo Frank. (O

Georgia Fulton county.

Personally appeared before the undersigned officer, W. B. Cate, who being duly sworn deposes and says: That on Sept., the 1st, 1913, in the afternoon, I was standing at the corner of Alabama Street and S. Pryor Street, and had intended to go down S. Pryor Street to the Court House where the Frank trial was being conducted but was unable to get any closer to the Court House on account of the crowd that had gathered in the street, I was in about one block of the Court House, while I was standing at this place I heard a great deal of cheering and shouting, the street being full of men most of whom were making noise and cheering. I saw some one come out of the court house, who I understood was Hugh Dorsey the Solicitor General, and he was picked up by some of the crowd and carried across the street on the shoulders of the men who had him. I could not see the man that was carried on the shoulders of the men very well but was told that it was Dorsey. There was at this time fully three thousand men gathered around the Court House, filling the streets on all sides of the court house. I only know Col. Dorsey by sight.

W. B. Cate.

Sworn to and subscribed to before me,
this Sept., 16, 1913.
Virlyn B. Moore, Notary Public Fulton County, Ga.

L. S. Roan, Judge.

00021

EXHIBIT S.

State of Georgia Vs. Leo M. Frank,

In Fulton Superior Court.

State of Georgia,

County of Fulton.

Personally appeared J. H. G. Cochran, who being duly sworn deposes and says that he is a resident of Atlanta, Ga., he remembers the close of the trial of Leo M. Frank and was present in front of the Court House in Atlanta, Ga., on the day that the case closed and on the day that the jury returned the verdict of guilty in said case.

On the day aforesaid, to-wit;- that the jury returned the verdict, Mr. Cochran was standing in front of the Court House at the time the jury came out of the Court House to go to dinner, at just about the same time or near that time, and while the jury were in the vicinity of the Court House, Solicitor General Hugh M. Dorsey came out of the Court House and went across the street to the Kiser Building.

Deponent says that at the appearance of Solicitor Dorsey on the street coming from the Court House the crowd in the street numbering between five hundred (500) and one thousand (1,000) people to the best of this deponent's estimate, broke into loud and tumultous cheering of the Solicitor, the jury being at the time near the Court House and proceeding up Pryor street and being within sight of this Deponent at the time the cheering commenced, and that said cheering lasted the whole time that the Solicitor General was crossing the street and until he had entered the Kiser Building.

This Deponent knows that this cheering which took place in the presence of the jury, or in their hearing, and while they were on Pryor street a short distance from the Court House, was cheering for the Solicitor and he remembers the Solicitor's stopping at the entrance of the Kiser Building and taking off his hat and bowing to the crowds who were cheering; not only were the crowds cheering him but people in the windows of the Kiser Building were also cheering and waving their hands and handherchiefs at the Solicitor; all of which was practically in the presence of the jury, at least within their hearing, before

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L. S. Roan, Judge

they proceeded up Pryor Street. Further deposing he says that on said day the jury took dinner at the German Cafe, on South Pryor Street, a distance of approximately one hundred fifty (150) to two hundred (200) feet from the Kiser Building, and that both outside of the Cafe and in the Cafe, the cheering of the Solicitor General could be heard by any person.

J. H. G. Cochran.

Sworn to and subscribed to before me,
this September 15th, 1913.

J. H. Porter, Notary Public County of Fulton State of Ga.

000281

EXHIBIT T.

State of Georgia, Vs. Leo M. Frank,

In Fulton Superior Court.

State of Georgia,

County of Fulton.

Personally appeared H. G. Williams, resident of Atlanta, Ga., who deposes and says that on the day of the Frank trial closed, and verdict of guilty was found by the jury against Leo M. Frank accused of the murder of Mary Phagan, this Deponent was on South Pryor Street in front of the Court House.

This Deponent saw Solicitor Dorsey come from the Court Hou se and cross the street to the Kiser Building in the presence of exceeding five hundred (500) people, who cheered his apperance at the entrance of the Court House with loud and continued cheering, which cheering continued until he had entered the Kiser Building across the street, and which cheering was acknowledged by Solicitor General Dorsey at the entrance of the Kiser Building, where he turned and raised his hat to the people who were cheering him.

Just preceding Solicitor Dorsey, the jury had come out of the Court House and had gone a short way up the street to the German Cafe for lunch, at the time of this cheering, which could be heard for a great distance on all sides of the Court House the jury were in easy hearing distance of the noise during the whole time when the crowd was cheering Solicitor Dorsey.

Said demonstration over the Solicitor General occupied not less than three (3) minutes, and perhaps not exceeding five (5) minutes, and took place on the last day of the trial, immediately after the jury had come from the Court House on their way to dinner Further deposing, this Deponent says that practically the same demonstration took place on Saturday preceding the time hereinbefore specified, at the time when Solicitor Dorsey came from the Court House to go to his office and when the jury were proceeding from the Court House; said demonstration on Saturday being in the presence of the Solicitor and in the hearing of the jury, and being a demonstration over the

L. S. Roan, Judge.

000281

Solicitor General.

H. G. Williams.

Sworn to and subscribed to before me,
this September 15th, 1913.
Robt. C. Patterson,
Notary Public, Fulton County, State of Ga.

EXHIBIT U.

State of Georgia,

Vs. Fulton Superior Court.

Leo M. Frank.

Georgia, Fulton County.

Personally appeared before the undersigned a Notary Public in and for said county, E. G. Pursley, who on oath says that he is a resident of the City of Atlanta, residing at #50Ponders Ave., with office at #700 Temple Court.

Deponent says that on Friday noon, before the above stated case went to the jury on Monday, he was present in the Court room where the trial of Leo M. Frank has been held; that when court adjourned and the jury had left and gone to lunch he came out of the courthouse and there was loud cheering for "Dorsey", which lasted for several minutes. Deponent walked from the Court house to his office on seventh floor of Temple Court Building, and when he reached his office some one asked deponent what all the racket or fuss was about down on the street.

E. G. Pursley.

Sworn to and subscribed before me,
this 13th day of Sept., 1913.
Robt. C. Patterson, Notary Public Fulton Co. Ga.

L. S. Roan, Judge.

000284

EXHIBIT V.

State of Georgia,

Vs.

Leo M. Frank.

Personally appeared Marano Benbenisty, who on oath says that he was standing outside of the court house on Friday afternoon, August 22nd, at about 12.20, and I saw the jury come out of the court room. Soon after the jury came out of the court room. Mr. Dorsey came out, and the crowd set up cheering and yelling "Hurrah for Dorsey".

At the time of the yelling and cheering the jury was just crossing the street towards the Barbers' Supply Company, which is next to the Kaiser Building. That in the opinion of the deponent there was about a thousand people crowding about the court room.

Marano Benbenisty.

Sworn to and subscribed before me,
this 29th day of August, 1913.
C. A. Stokes, Notary Public Fulton County, Ga.

L. S. Roan, Judge.

000281

EXHIBIT W.

State of Georgia.

Vs.

Leo M. Frank.

Personally appeared Isaac Hazan, who on oath says that he was standing outside of the court house on Friday afternoon, Aug. 22nd, at about 12.20, and I saw the jury come out of the court room. Soon after the jury came out of the court room, Mr. Dorsey came out, and the crowd set up cheering and yelling "Hurrah", "Hurrah". At the time of the yelling and cheering the jury was just crossing the street towards the Barber's Supply Co., which is next to the Kiser Building. That in the opinion of the deponent there was about a thousand people crowding about the court room.

Deponent further states that as the jury reached the other side of Pryor Street in front of the Barbers' Supply Company, deponent heard ten or fifteen men in front of the court house yelling toward the jury that unless they brought in a verdict of guilty, that they would kill the whole damn bunch; that in the opinion of your deponent, the jury must have heard them, because one of the jurors turned his face toward the yelling just when that occurred.

L. S. Roan, Judge

Isaac J Hazan.

Sworn to and subscribed before me,
this 29th day of August, 1913.

C. A. Stokes,
Notary Public Fulton County, Ga.

000281

EXHIBIT X.

GEORGIA, FULTON COUNTY.

Personally appeared John H. Shipp, who on oath says that on Friday August 22, he was in room 301 of the Kaiser Building, corner Hunter and So. Pryor Streets, that he saw the jury come out of the court house about 6 P. M., that a few minutes after the jury came out of the court house, Mr. Dorsey, appeared in the entrance, whereupon a great cheer arose from the people crowding in the streets and around the court house entrance; that at that time deponent saw the jury about fifty feet from the entrance of the court house, the jury at that time crossing the street diagonally toward the German Cafe; that in the opinion of deponent the yells and cheers could have been heard several blocks away; that the crowd yelled "Hurrah for Dorsey" and that the words were plainly audible.

Deponent further states that he was in room 301 of the Kaiser Building on Saturday August 23; that he saw the jury emerge from the court house entrance at about ~~one o'clock;~~ that a few minutes after the jury came out. Mr. Dorsey, came out and immediately a great crowd around the court house door set up a yell and cheer saying "Hurrah for Dorsey", taking off their hats and throwing them in the air and otherwise exhibiting their enthusiasm, that at the time of the yelling, the jury was not in sight of the deponent, but deponent is of the opinion that they were within easy hearing of the yelling and must have heard all that transpired.

Deponent further states that while he has been around the court house, during the progress of the trial, he has heard numerous threats of violence to the accused in case of an acquittal; that deponent knows that one of the persons making threats was armed, that he exhibited his weapon at time of making threat.

John H. Shipp.

Sworn to and subscribed before me,
this 26th day of August, 1913.
C. A. Stokes, Notary Public Fulton County, Ga.

L. S. Roan, Judge

000281

EXHIBIT Y.

The State of Georgia,

Vs.

Leo M. Frank.

Personally appeared B. S. Lipshitz, who on oath says that he was out in front of the Court House, mingling with the crowd, at about one P. M., on Saturday, August 23, immediately after court adjourned; that deponent saw the jury come out and about one or two minutes thereafter, Mr. Dorsey came out, whereupon there was great cheering and yelling by the crowd; that at the time the yelling and cheering took place, the jury could not have been more than one minutes' walk away from the court house, and in the opinion of deponent, they could have heard the cheering and yelling:

Deponent further states that he was also present at the court house on Friday evening. August 22nd, when Mr. Dorsey left the court house, and heard the cheering and heard the crowd yelling. "Hurrah".

B. S. Lipshitz.

Sworn to and subscribed before me,
this 29th day of August, 1913.

C. A. Stokes,
Notary Public Fulton County, Ga.

L. S. Roan, Judge

000281

EXHIBIT Z.

GEORGIA, FULTON COUNTY.

Personally appeared Charles J. Moore, who on oath says that he is an attorney at law, occupying room 301 on the third floor of the Kaiser Building, at the corner of Hunter and So. Pryor sts., that on Friday, August 22, deponent was in his office and saw the jury come out of the court house entrance at about six P. M. that soon after Mr. Dorsey appeared in the court house entrance and a great cheering and yelling occurred by the crowd immediately opposite the entrance, and afterwards the crowd yelled "Hurrah for Dorsey", and the volume of the yells were so great that they could have been heard many blocks away; that they threw up their hats and gave other demonstrations, that at the time of the yelling the jury was just crossing the street toward the German Cafe, not fifty feet away from the entrance, and in the opinion of deponent must have heard the cheering and the words, "Hurrah for Dorsey", ~~because they could be plainly~~ heard.

Deponent further states that he was in his office on Saturday, Aug. 23, when the jurycame out of the court house at about one o'clock, and he heard yelling and cheering when Mr. Dorsey appeared a few minutes afterwards. Deponent did not see the jury at the time of the yelling, but it occurred so soon after the jury came out of the court house that in the opinion of deponent the jury must have heard the cheering and the words that were yelled.

Deponent further states that since the trial has been in progress he has heard several parties making threats of personal violence against the accused in the event of an acquittal; that these parties were loitering in and around the court house entrance and making threats that if the jury did not hang Frank, that they would pay the jury the compliment of sitting on the case and if the jury did not do its duty, they would; that deponent recalls the names of R. W. Miller, Richard Dutton; that Milner loitered continuously around the court house entrance and circulated among the crowd.

Charles J. Moore,

203.

L. S. Ryan, Jr. Ass't

Sworn to and subscribed before me,

this 26th day of August, 1913.

C. A. Stokes, Notary Public Fulton County. Ga.

000281

EXHIBIT A.A.

GEORGIA, FULTON COUNTY.

Personally appeared D. Rosinky, who on oath deposes and states that on Friday, August 22, and Saturday August 23, he was standing near the corner of Hunter and South Pryor Street, in the city of Atlanta, Ga., and that when the Solicitor General, H. M. Dorsey, came out of the old City Hall Building, now used as a court house, there was loud and vociferous cheering by the assembled crowd; that members of the crowd took the Solicitor in their arms and carried him across the street to the Kaiser Building.

D. Rosinky.

Sworn to and subscribed before me,
this 26th day of August, 1913.
Leonard Haas, Notary Public Fulton County, Ga.

L. S. Roan, Judge

EXHIBIT BB.

Dougherty
Georgia ~~Fulton~~ County.

State of Georgia,

Vs. In the Superior Court of Fulton County, Ga.

Leo M. Frank.

Before me personally appears Mack Farkas, who being duly sworn deposes and says that attached to his affidavit is a carbon copy of an order made by Sam Farkas, of Albany, Ga., to Franklin Buggy Company, Incorporated, of Barnesville, Ga.

Said order is marked Exhibit "A" Said order was taken by A. H Henslee, a traveling salesman for said Franklin Buggy Co., in person, said order was taken on the date same bears date, to-wit: on July 8th, 1913.

This affidavit is made to be used on the motion for new trial in the above case. The name A. H. Henslee, on said order, is the handwriting and carbon copy of the signature of A. H. Henslee.

Mack Farkas.

Sworn to and subscribed before me,
this Oct. 21st, A. D. 1913.
L. L. Ford,
Notary Public Dougherty County, Ga.
(N. P. Seal.)

L. S. Roan, Judge

GEORGIA, DOUGHERTY county.

State of Georgia,

Vs. In the Superior Court of Fulton County, Ga.

Leo. M. Frank.

Before me personally appears B. W. Simon who being duly sworn deposes and says that attached to this affidavit is a carbon copy of an order made by Sam Farkas, of Albany Ga., to Franklin, Buggy Company, Incorporated, of Barnesville, Ga.

Said order is marked Exhibit "A". Said order was taken by A. H. Henslee, a traveling salesman for said Franklin Buggy Co. in person; said order was taken on the date same bears date, to-wit: on July 8th, 1913.

This affidavit is made to be used on the motion for new trial in the above case. The name A. H. Henslee, on said order is the handwriting and carbon copy of the signature of A. H. Henslee.

B. W. Simon,

Sworn to and subscribed before me,
this Oct., 21st, A. D. 1913.
L. L. Ford, Notary Public Dougherty County, Ga.
(N. P. Seal.)

L. S. Roan, Judge.

GEORGIA, DOUGHERTY COUNTY.

State of Georgia,

Vs. In the Superior Court of Fulton County, Ga.

Leo M. Frank.

Before me personally appears Sam Farkas who being duly sworn deposes and says that attached to this affidavit is a carbon copy of an order made by Sam Farkas, of Albany, Ga., to Franklin Buggy Company, Incorporated, of Barnesville, Ga.

Said order is marked Exhibit "A" Said order was taken by A. H. Henslee, a traveling salesman for said Franklin Buggy Company, in person; said order was taken on the date same bears date, to-wit; on July 8th, 1913.

This affidavit is made to be used on the motion for new trial in the above case. The name A. H. Henslee on said order, is the handwriting and carbon copy of the signature of A. H. Henslee.

Sam Farkas.

Sworn to and subscribed before me,
this Oct. 21st, A. D. 1913.

L. L. Ford,
Notary Public Dougherty County, Ga.
(N. P. Seal.)

L. S. Roan, Judge

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Franklin Buggy Company, Inc.

Manufacturers of the

"Improved Barnesville Buggy".

Barnesville, Georgia.

When Ship At Once-

How Ship.....

Ship to Sam Farkas-

Albany, Ga.

July 8, 1913.

Terms: Oct. 1st, 2.50 per cent. discount if paid in 30 days from date of invoice; if not discounted in 30 days buyer agrees to give note to cover the account net 90 days, from date of invoice, note to be made payable to any bankerin Georgia. All goods p[illegible] - F.O.B. Barnesville, Ga. No freight allowance. All notes due after 90 days from invoice to bear interest at 8 per cent. per annum.

Quantity	Cat No.	Width	Body Style	Gear Spring	Gear Color	Axle Drop Arch	Wheels Tread	Wheels Height	Top	Trimmings	Stripe	Price Each	
1	44	20	R	Side	Blk.	Ark	3/4	38/42	C R	R	R	62	50
1	Set	Rubber for				Job		44 V.	7/8			15.	00
1	44	22	R	Side	Car	ark.	3/4	38/42	R	R	R	62	50
1	44	22	R	Side	Car	"	3/4	38/42	R	R	R	62	50
1	Set	Rubber for				Job		44 V.	7/8			15	00
1	44	23[illegible]	R	Side	Blk.	Ark.	3/4	38/42	R	R	R	62	50

EXHIBIT A.

All orders subject to manufacturers' contingencies. This order not subject to countermand after 5 days. No agreement considered unless same be written in face of this order.

The title of goods delivered under this contract to remain in the name of the sellers until they shall have received money for same, and upon failure to make such pay ments the sellers shall repossess themselves and take away such g ods.. Should time be taken under the terms of settlement of this contract by buyer and should he become insolvent or in default, sellers shall have the right to declare the whole amount, including all papers given, to be due and collectible. The acceptance of the goods implies the acceptance of this condition. All orders entered as regular 5 ft. Track unless other Track if specified. All prices F.O.B. Barnesville, Ga.

Signature Sam Farkas

Per B.W. Swinon, Bk.

Salesman- A.H. Henslee.

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L.S. Roan, Judge.

EXHIBIT CC.

Georgia Walton County.

State of Georgia,

vs. In the Superior Court of Fulton County, Ga.

Leo M. Frank.

Before me, an officer authorized under the laws of Ga., to administer oaths, personally appear J. J. Nunnally and W. L. Ricker, of Monroe, Ga., who, being duly sworn, depose and sayon oath as follows:

That they have seen in the public prints that A. H. Henslee, one of the jurors in the Frank case, admits having made certain statements as to Frank's guilt of the murder of Mary Phagan, but says these statements were made after the trial of Leo M. Frank, and not before.

These deponents say that, so far as they know, the said Henslee has not been in Monroe, Ga., since the trial of Leo M. Frank, and they reiterate the statement that all the statements made in their hearing by said Henslee, and testified about by these deponents of September 27th, 1913, were made before the commencement of the trial of Leo M. Frank, for the murder of Mary Phagan on July 28th, 1913, to the best of these deponent's recollection, these statements were made in June, 1913, although as to the exact month these deponents say not.

J. J. Nunnally,

W. L. Ricker,

Sworn to and subscribed before me this,

October 10, A. D. 1913.

J. B. Shelnutt, Clerk Sup. Court Walton County, Ga.

L. J. Roan Judge

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EXHIBIT DD.

GEORGIA, FULTON COUNTY

State of Georgia,

Vs. In the Superior Court of Fulton County, Ga.

Leo M. Frank.

Before me personally appears Julian A. Lehman, who, being duly sworn deposes and says on oath that he makes this affidavit for use in motion for new trial in above stated case.

Further deposing, he says on oath that he reiterates his statement heretofore made under oath that between the time of the murder of Mary Phagan, as reported by the newspapers, and the commencement of the trial of Leo M. Frank, on July 28th, 1913, he on two occasions, heard A. H. Henslee, a juror in said case, express himself firmly and positively as to the guilt of Leo M. Frank of the murder of Mary Phagan, in the language set forth in the affidavit heretofore made by this deponent and attached to the original motion for new trial in said case; one of said times was on or about June 20th, 1913, another time was early in the month of June, to the best of this deponent's recollection near June 2nd, but as to the exact date this deponent cannot state.

L. S. Roan, Judge

Julian A. Lehman.

Sworn to and subscribed before me,

this 1 day of Oct., A. D. 1913.

J. H. Porter,

Notary Public Fulton County, Ga.

000291

EXIHIBT EE.

GEORGIA, FULTON COUNTY.

State of Georgia,

Vs. In Fulton Superior Court.

Leo M. Frank.

Personally appeared Leon Harrison, who being duly sworn deposes and says that he makes this affidavit to be used on the motion for new trial in the above case.

Further deposing, he says that he is not acquainted with Leo M. Frank, is not related to him, and has never seen him to know him; he says on oath that he is not personally acquainted with A. H. Henslee but he knows that said Henslee is the party about whom he makes this affidavit.

Further deposing, he says that during the month of May 1913 deponent was walking from Scherrer's lunch place on Peachtree st. toward Five Points, when he was attracted by a conversation between two men, one of whom was said A. H. Henslee, the same Henslee that served on the Frank jury and whose picture appeared in the Atlanta Georgian of August 26th, 1913, page 2, a clipping of which paper is hereto attached.

At the time, which was shortly after the Mary Phagan murder, almost everyone was discussing the murder, and this deponent was very much interested in the matter, as was everyone else; this deponent heard the man with Henslee say to Henslee "I don't believe Frank committed that murder; if he did, he is one Jew in a million, not one Jew in a million would commit such a crime"., and to this statement said Henslee replied in deponent's hearing : " I believe he did kill the girl, and if by any chance I get on the jury that tries him, I'll try my best to have him convicted".

The above statement of Henslee was in reference to Frank's guilt of the murder of Mary [illegible].

Leon Harrison,

Sworn to and subscribed before me,
this 8th day of Oct., 1913.
Robt. C. Patterson, N. P. Fulton County, Ga.

L. S. Roan, Judge

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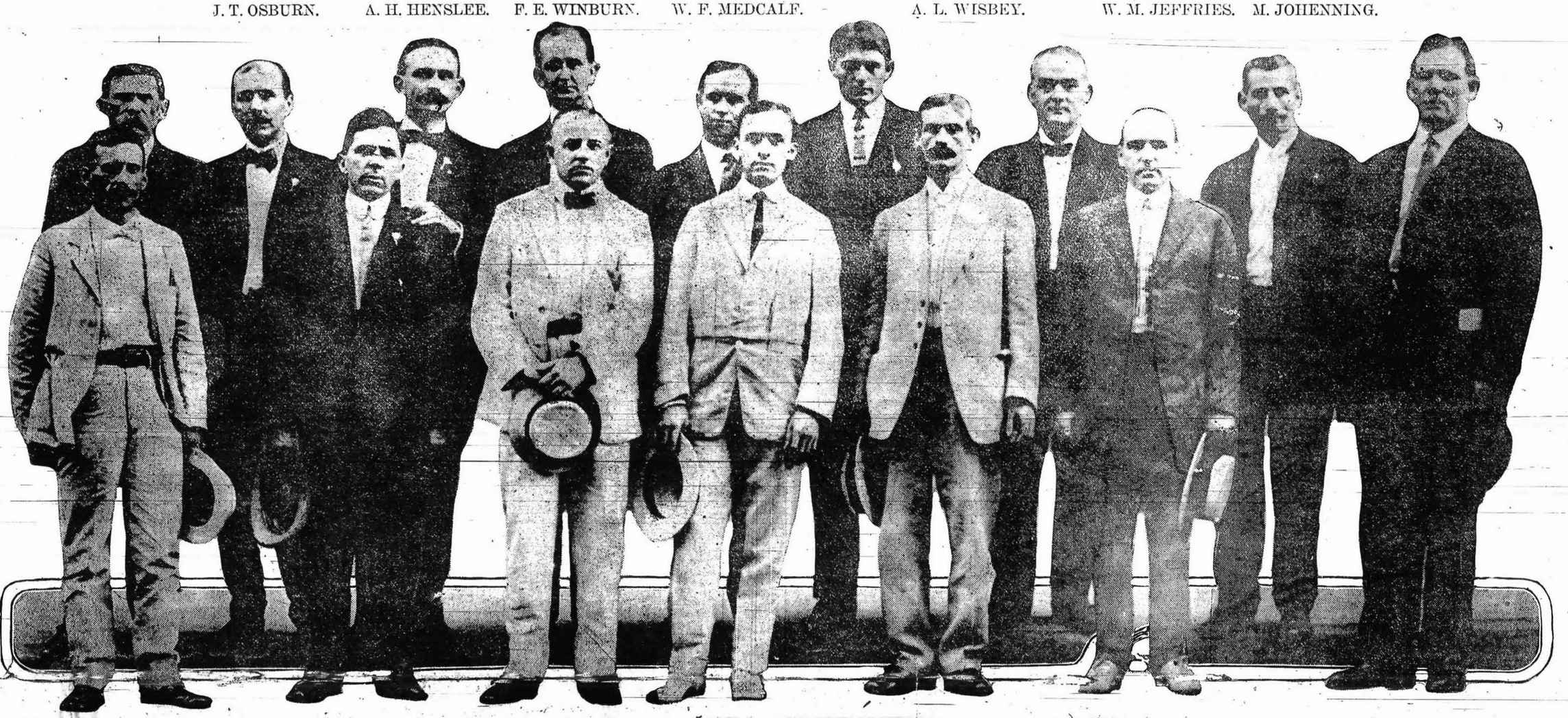
JURY THAT CONVICTED FRANK AS SLAYER OF MARY PHAGAN

J. T. OSBURN. A. H. HENSLEE. F. E. WINBURN. W. F. MEDCALF. A. L. WISBEY. W. M. JEFFRIES. M. JOHENNING.



DEPUTY HUBER. M. S. WOODWARD. F. V. L. SMITH. D. TOWNSEND. C. J. BOSSHARDT. J. F. HIGDON. DEPUTY LIDDELL.

EXHIBIT FF.

GEORGIA, WALTON COUNTY.

State of Georgia,

Vs. In the Superior Court of Fulton County,

Leo M. Frank. Georgia.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me, who, being duly sworn, depose and say on oath.

That they are personally acquainted with J. J. Nunnally and W. L. Ricker, and that said Nunnally and Ricker are each men of the highest personal and moral character, and reputation, and that they are each entirely trustworthy, and worthy of belief, as to any statement made by them or each of them.

R. C. Knight, Ex-Ordinary

Hal G. Nowell,

Sol. City Court.

O Roberts, Atty.

J. B. Shelnutt, Clerk Walton Superior Court

Alonzo C. Stone,

Judge City Court of Monroe.

Sworn to and subscribed before me this Oct. 10, 1913.

P. H. Michael, J. P. Walton Co. Ga.

L. S. Hoan, Judge.

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EXHIBIT GG.

Georgia, Hancock County.

State of Georgia,

Vs. In the Superior Court of Fulton County,

Leo M. Frank. Georgia.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me; who, being duly sworn, depose and say on oath:

That they are personally acquainted with Jno. M. Holmes, Shi. Gray and S. M. Johnson, and that said Holmes, Gray and Johnson are each men of the highest personal and moral character, and reputation, and that they are each entirely trustworthy, and worthy of belief, as to any statement made by them, or each of them.

J. B. Hightower, Sheriff H. Co. Ga.

W. H. Burwell,

Henry H. Little, Ordinary,

Frank L. Little, Chr. Board Education Sparta

T. M. Hunt.

H. D. Chapman, Tax Collector H. Co.

Thos. F. Fleming,

H. L. Middlebrooks, Cashier 1st N. Bank.

G. W. Rives, Mayor of Sparta.

R. E. Wheeler, Cashier Sparta Savings Bk.

W. E. Wiley, Clerk Sup. Court.

A. H. Birdsom, Tres. H. Co.

E. A. Rozier, Sr. Prest Bank of Sparta.

J. D. Burnett, Car Bank of Sparta.

Sworn to and subscribed before me this October 8th, 1913.

J. W. Lewis,

Not. Pub. Hancock Co. Ga.

L. S. Roan, Judge

000301

EXHIBIT HH.

Georgia, Fulton County.

State of Georgia,

Vs. In the Superior Court of Fulton County,

Leo M. Frank, Georgia.

Before me, an officer authorized under the laws of Georgia, to administer oaths, personally appears each of the undersigned persons, personally known to me, who, being duly sworn, depose and say on oath:

That they are personally acquainted with Julian A. Lehman; and that said Lehman is a man of the highest personal and moral character, and reputation, and that he is entirely trustworthy, and worthy of belief, as to any statement made by him.

W. F. Upshaw,
D. E. Bowman
Henry B. Kennedy

Sworn to and subscribed before me this Oct. 16th, A. D. 1913.

C. W. Burke,

N. P. Fulton Georgia.

L. S. Ruan, Judge

Georgia, Muscogee County.

State of Georgia,

Vs. In the Superior Court of Fulton County,

Leo M. Frank. Georgia.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me; who, being duly sworn depose and say on oath.

That they are personally acquainted with Julian A. Lehman, and that said Lehman is a man of the highest personal and moral character, and reputation, and that he is entirely trustworthy, and worthy of belief as to any statement made by him.

C. W. Mizell

R. P. Spencer, Jr.

Sworn to and subscribed before me this Oct. 15th, A. D. 1913.

H. B. Stephens,

N. P. Muscogee, Georgia.

(N. P. Seal.)

L. S. Roan, Judge.

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EXHIBIT II

Georgia, Fulton County.

State of Georgia,

Vs. In Fulton Superior Court.

Leo M. Frank.

Personally appeared the undersigned deponents, who, being duly sworn, depose and say that they are personally acquainted with C. P. Stough, of Atlanta, Fulton County, Georgia, and that they know him to be a man of high personal character, entirely trustworthy, and absolutely worthy of belief as to any statement made by him, whether on oath or otherwise.

A. L. Guthman,

L. P. Stephens,

A. H. Van Dyke.

Sworn to and subscribed before me,
this 22nd day of Oct., 1913.

C. W. Burke,
N. P. Fulton Co., Ga.

L. S. Roan Judge.

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EXHIBIT JJ.

State of Georgia,

County of Muscogee.

Personally appeared before me, an officer duly authorized by law to administer oaths, the undersigned who, being sworn, deposes and says that he was head clerk at the New Albany Hotel (Albany Hotel Company , Proprietors), located at Albany, in said state and county, all during the months of June, July and Aug., 1913, and for several years prior to that time; and that attached hereto, marked "Exhibit A", is the register of guests at said hotel from the 20th day of June 1913, to the 31st day of Aug., 1913, and that there was no other register of guests used at said hotel during the period above stated.

And deponent says further that on the third page of said register of guests, under date of July 8th, 1913, (Contd 7/8/13) on the second line from the top, is the signature of A. H. Henslee, address "Atlanta, U. S. A., assigned to room 79 in said hotel, and deponent says further that he was the clerk on duty at said hotel at the time the said Henslee registered his said name on said register, and was a guest at said hotel during that day; and deponent says further that he is personally acquainted with the said Henslee.

And deponent says further that he is aware and had knowledge that this affidavit is to be used as evidence in the hearing of the motion for a new trial in the case of the State of Georgia Vs. Leo M. Frank, which is now pending in the Superior Court of Fulton County, Georgia.

W. W. Little,

Sworn to and subscribed before me,

this Oct., 23rd, 1913.

H. K. Gammon, J. P. Muscogee County, Ga.

E. S. Roan, Judge

EXHIBIT KK.

State of Georgia,

County of Fulton.

State of Georgia, No.

Vs. Murder

Leo M. Frank. Fulton Superior Court.

Personally appeared Leo M. Frank who on oath deposes and states that he is the defendant above named that he did not know nor has he ever heard until the end of his trial in the above stated case that A. H. Henslee and Mercellus Johenning had any prejudice or bias against deponent nor that they or either of them had ever said or done anything indicating that they believed in deponents guilt, or had any prejudice or bias against deponent.

Leo M. Frank.

Sworn to and subscribed before me,
this 24th of Oct., 1913.

J. O. Knight

Notary Public Fulton County, Georgia.

L. S. Roan, Judge

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EXHIBIT M M

Georgia, Hancock County.

State of Georgia,

Vs. In Superior Court of Fulton County,

Leo M. Frank. Georgia.

To the Honorable Clerk of the Superior Court of Hancock County, Georgia.

This application shows the following facts:

Heretofore a verdict of guilty was rendered in said case, judgment was passed by the Court, and a motion for new trial was filed in said case, which said motion for new trial is set for hearing on Oct., 4th, 1913, before Judge L. S. Roan, Judge of the Stone Mountain Circuit.

It is shown that there are three parties who reside in Sparta, Hancock County, Georgia, to-wit: John M. Holmes, Esq., Shi Gray, Esq., and S. M. Johnson, Esq., whose affidavits are desired by the movant as evidence on said motion; and further that all three of said parties have refused to give said affidavits.

Wherefore, this application is made to the Clerk as provided by Sections 5918-19 of the Civil Code of 1910, State of Ga., that subpoenas may be issued addressed to each of said parties requiring them to be and appear before John W. Lewis, Esq., a Notary Public of said Hancock County, Ga., and answer under oath such written questions as are hereto annexed and such further written questions as may be propounded upon the hearing, in lieu of making said affidavit.

R. R. Arnold,

L. Z. Rosser,

Attys. for Leo M. Frank. Movant.

L. S. Roan, Judge.

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Georgia, Hancock County.

State of Georgia,

Vs. In Superior Court of Fulton County, Georgia.

Leo M. Frank.

Questions to be propounded to Shi Gray of Sparta, Hancock County Georgia.

1. (Q). Have you examined clipping from the Atlanta Georgian of Aug. 26, 1913, hereto attached, showing a picture of the jury in the above stated case, and showing a likeness of Juror A. H. Henslee?

(A). Yes.

2. (Q). Are you personally acquainted with A. H. Henslee?

(A). Yes.

3 (Q). Did you or not hear A. H. Henslee, discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank, charged with the murder of Mary Phagan?

(A). Yes.

4 (Q). To the best of your recollection what did he say in this conversation?

In a conversation in Walker and Holmes Insurance office, some one asked Henslee whether he Henslee thought Frank was guilty of the murder of Mary Phagan, Henslee answered in the affirmative. The answer given by Henslee was stated positively and firmly. The conversation lasted for about 20 minutes or 1/2 an hour. All of us were talking, Henslee and Mr. Holmes and Mr. Johnson and others.

The whole conversation at the time with Henslee was on the proposition as to whether or not Leo M. Frank was guilty of the murder of Mary Phagan.

5 (Q). Where and when did this take place, and who else was present?

(A). It was before the trial of Frank, and it was in the Insurance office of Walker and Holmes.

L. S. Roan, Judge.

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6. (Q). Did you not hear A. H. Henslee state in Sparta Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan.?

(A). Yes.

7 (Q). Did you not hear A. H. Henslee say that he believed Leo M. Frank was guilty of the murder of Mary Phagan, and further that he would bet one dollar or other sum, or would like to bet one dollar or other sum, that he, the said A. H. Henslee, would be put on the jury to try Leo M. Frank for the murder of Mary Phagan?

(A). I heard him say he was summoned as a juror in the same conversation already testified about.

8 (Q). State in full what is you business occupation, or if more than one, what are your business occupations?

I am a dealer in live stock.

H. Shi Gray.

Georgia, Hancock County.

Before me personally appeared H. Shi Gray who being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth; said answers executed, sworn to, and subscribed before me this Sept., 26, 1913.

J. W. Lewis,

Notary Public Hancock County, Ga.

L. S. Ryan, Judge

Georgia, Hancock County.

State of Georgia,

Vs. In Superior Court of Fulton County,

Leo M. Frank. Georgia.

Questions to be propounded to T. M. Johnson of Sparta, Hancock County, Ga.

1 (Q). Have you examined clipping from the Atlanta Georgian of Aug. 26, 1913, hereto attached, showing a picture of the jury in the above stated case, and showing a likeness of Juror A. H. Henslee?

(A). Yes.

2. (Q). Are you personally acquainted with A. H. Henslee?

(A). I know him by sight.

3. (Q). Did you or not hear A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan?

(A). Yes.

4 (Q). To the best of your recollection what did he say in this conversation?

Several parties were talking, some said they thought Leo M. Frank was guilty of the murder of Mary Phagan, others said they did not. Henslee stated his conviction that Frank was guilty of the murder of Mary Phagan.

He did this firmly and positively.

5. (Q). Where and when did this take place, and who else was present?

(A). Walker and Holmes office about the last of June 1913.

6. (Q). Did you not hear A. H. Henslee state, in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan?

(A). Yes.

7 (Q). Did you not hear A. H. Henslee say that he believed Leo M. Frank was guilty of the murder of Mary Phagan, and further that he would bet one dollar or other sum, or would like

L. S. Roan, Judge.

to bet one dollar or other sum, that he the said A. H. Henslee would be put on the jury to try Leo M. Frank for the murder of Mary Phagan?

(A). He said he had been drawn as a juror and might have to serve.

8. (Q). State in full what is your business occupation, or if more than one, what are your business occupations?

Work for Walker and Holmes.

T. M. Johnson.

Georgia County.

Before me personally appeared T. M. Johnson who being first duly sworn true answers to make to the above and foregoing written questions answered same as above set forth, said answers executed, sworn to and subscribed before me this Sept., 26, 1913.

J. W. Lewis,

Notary Public Hancock County, Ga.

L. S. Roan Judge.

Georgia, Hancock County.

State of Georgia,

Vs. In Superior Court of Fulton County,

Leo M. Frank. Georgia.

Questions to be propounded to John M. Holmes of Sparta, Hancock County, Georgia.

1. (Q). Have you examined clipping from the Atlanta Georgian of Aug. 26, 1913. hereto attached, showing a picture of the jury in the above stated case, and showing a likeness of Juror A. H. Henslee?

(A). Yes.

2. (Q). Are you personally acquainted with A. H. Henslee?

(A). Yes.

3. (Q). Did you or not hear A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank, charged with the murder of Mary Phagan?

(A). Yes.

4 (Q). To the best of your recollection what did he say in this conversation?

Several men were in my office Mr. Henslee was asked the question whether or not he believed Leo M. Frank, was guilty of the murder of Mary Phagan. He stated that he did.

He stated this positively and firmly.

5. (Q). Where and when did this take place, and who else was present?

(A). Walker and Holmes Insurance office on the morning of June 27th, 1913.

6 (Q). Did you not hear A. H. Henslee state in Sparta, Ga between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank, for the murder of Mary Phagan, that Leo M. Frank, was guilty of the murder of Mary Phagan?

(A) Yes.

7. (Q). Did you not hear A. H. Henslee say that he believed

L. S. Roan, Judge.

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Leo M. Frank was guilty of the murder of Mary Phagan, and further that he would bet one dollar or other sum, or would like to bet one dollar or other sum, that he, the said A. H. Henslee, would be put on the jury to try Leo M. Frank for the murder of Mary Phagan?

(A). He stated that he had been summoned as a juror.

8. (Q). State in full what is your business occupation, or if more than one, what are your business occupations?

Member of the firm of Walker and Holmes, Real Estate and Insurance.

John M. Holmes.

Georgia, Hancock County.

Before me personally appeared John M. Holmes, who being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth; said answers, executed, sworn to, and subscribed before me this Sept.,26, 1913.

J. W. Lewis,

Notary Public Hancock County, Ga.

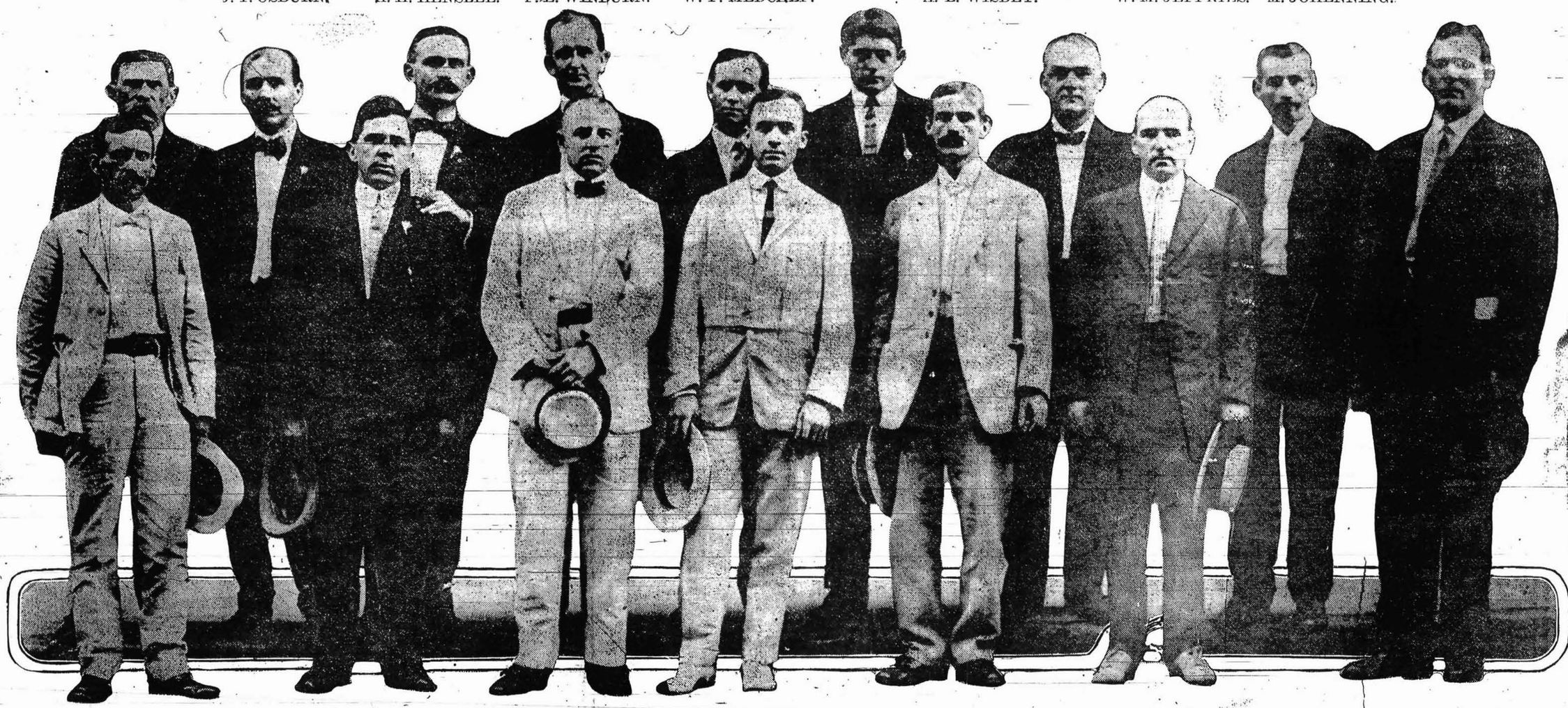
L. S. Roan, Judge.

000316

L. S. Roan Judge

JURY THAT CONVICTED FRANK AS SLAYER OF MARY PHAGAN

J. T. OSBURN. A. H. HENSLEE. F. E. WINBURN. W. F. MEDCALF. A. L. WISBEY. W. M. JEFFRIES. M. JOHENNING.



DEPUTY HUBER. M. S. WOODWARD. F. V. L. SMITH. D. TOWNSEND. C. J. BOSSHARDT. J. F. HIGDON. DEPUTY LIDDELL.

EXHIBIT-LL.

State of Georgia,

Vs. In the Superior Court of Fulton County,

Leo M. Frank. Georgia.

To the Honorable George L. Bell, Judge of the Fulton Superior Court:

This application is presented to the Court by Leo M. Frank, the defendant in the above stated case, and shows to the Court the following facts:

The above stated case of the State of Georgia, Vs. Leo M. Frank, indictment for murder, has been tried, a verdict found, and this defendant sentenced; and a motion for a new trial in said case is now pending before Honorable L. S. Roan, Judge of the Stone Mountain Circuit, and hearing set for October 4, 1913,

It is shown to this Court that there is a certain party in the City of Atlanta, one C. P. Stough, whose affidavit is desired by this defendant to be used as evidence on the motion for new trial, and that said C. P. Stough refuses to give said affidavit; and it is desired to take testimony of said C. P. Stough under Section 5918 of the Code of 1910 of the State of Georgia.

Wherefore, the premises considered, this application is made for the purpose of having this Court name a Commissioner to take said testimony and for the purpose of having subpoenas issued as provided in said Section of the Code, requiring said S. P. Stough to be and appear before said Commissioner at a date and place named, to answer certain questions to be propounded to him by Counsel for said defendant.

This September 29th, 1913.

R. R. Arnold,

L. Z. Rosser,

Defts. Attys.

L. S. Roan, Judge.

The foregoing application read and considered. It is ordered that Sig Teitlebaum, act as Commissioner in said case, in accordance with Section 5918 of the Code of Georgia of 1910.

This Sept., 29th, 1913.

Geo. L. Bell,

Judge of Superior Court, Atlanta Circuit.

Georgia, Fulton County.

State of Georgia,

Vs. In Fulton Superior Court.

Leo M. Frank.

Written questions to be propounded to C. P. Stough, a witness for the defendant in the motion for new trial pending in said case, set for hearing October 4, 1913, before Judge L. S. Roan, Judge of the Stone Mountain Circuit.

1. Q. Do you know A. H. Henslee, who served on the jury in the above stated case at the trial commencing July 28, 1913?

A. Yes.

2 Q. How long have you known him?

A. About 6 or 7 years.

3. Q During the time between the murder of Mary Phagan, as reported in the newspapers, to-wit, on April 26, 1913, and the commencement of the trial of the above case, what statements, if any, did you hear juror Henslee make in connection with Leo M. Frank, or as to who murdered Mary Phagan, or as to who was guilty of this murder; or as to how the trial of Leo M. Frank for this murder would terminate?

A. About the time that Conley was reported to have made a statement I was coming into the City on a street car from the home of my daughter. Henslee was also on the car. I heard him say this, in reference to Leo M. Frank's guilt of the murder of Mary Phagan. "I think he is guilty and I would like to be in a position where I could help break his damned neck."

4. Q. How were these statements made?

A. This statement was most positive. He was as positive as I was and I was as positive as I could be in what I said in the conversation.

5 Q. When and where was this?

A. On a College Park street car, coming into the City.

6. Q. What is your business?

Inspector for the Masons Annuity.

C. P. Stough

L. S. Roan Judge.

228.

Georgia, Fulton County.

Personally appeared C. P. Stough who having been duly sworn made answer as above indicated and shows to the foregoing written questions 1 -6 inclusive; said answers executed, sworn to and subscribed before me this Sept. 29th, 1913.

Sig Teitlebaum,

Not. Pub. Fulton County, Ga. and Commission to take testimony.

C. S. Penny Judge -

EXHIBIT " NN.

Georgia,

Fulton County.

State of Georgia, In Superior Court of Fulton County,

Vs. Georgia.

Leo M. Frank.

To the Honorable Clerk of the Superior Court of Walton County, Georgia.

This application shows the following facts:

Heretofore, a verdict of guilty was returned in said case, judgment was passed by the Court, and a motion for new trial was filed in said case, which said motion for new trial is set for hearing on October 4th, 1913, before Judge L. S. Roan, Judge of the Stone Mountain Circuit.

It is shown that there are three parties who reside in Monroe Walton County, Georgia, to-wit: J. J. Nunnally, Esq., Virgil Harris, Esq. and W. L. Ricker, Esq., whose affidavits are desired by the movant as evidence on said motion, and further that all three of said parties have refused to give said affidavits.

Wherefore, this application is made to the Clerk, as provided by Section 5918-19 of the Civil Code of 1910, State of Ga., that subpoenas may be issued addressed to each of said parties, requiring them to be and appear before Orvin Roberts or Clifford Walker, Notary Publics of said Walton Co., Ga. and answer under oath such written questions as are hereto annexed and such further written questions as may be propounded upon the hearing, in lieu of making said affidavit.

L. S. Roan, Judge

R. R. Arnold,

L. Z. Rosser,

Attys. for Leo M. Frank, Movant.

DOCUMENT

Georgia Fulton County.

State of Georgia,

Vs. In the Superior Court of Fulton County,

Leo M. Frank. Georgia. /

Written questions to be propounded to J. J. Nunnally, Esq. W. L. Ricker, Esq. Virgil Harris, Esq., and _____ residence Monroe, Walton County, Ga.

1. (Q). Have you examined the attached clipping from the Atlanta Georgian of August 23, 1913, and particularly the likeness in said clipping of A. H. Henslee?

(A). Yes I have.

2. (Q). Do you know A. H. Henslee?

(A). I do.

3. (Q). Do you recall whether or not A. H. Henslee was in Monroe, Georgia, between the time of the murder of Mary Phagan, as reported in the papers, and the time of the commencement of the trial of Leo M. Frank for the murder of Mary Phagan: to-wit - July 28, 1913.

(A). He was.

4 (Q). Did you hear A. H. Henslee make any statements in connection with the guilt of Leo M. Frank of the murder of Mary Phagan, and if so, what were those statements?

I did. He talked for some time in the store of Nunnally and Harris, and stated that Leo M. Frank was guilty of the murder of Mary Phagan. He denounced Frank bitterly and vehemently and made this statement about Frank in my hearing; He said "They are going to break that Jews neck" This was stated most bitterly and positively

5 (Q). Did you hear A. H. Henslee, in Monroe, Ga., between said dates, make any statements as to what he believed a about the guilt of Leo M. Frank of the murder of Mary Phagan, if so, what were those statements?

(A). Yes, he said that Frank was guilty.

6. (Q). Did A. H. Henslee, in Monroe, Ga., between said dates, in your presence, and hearing, say he thought Leo M. Frank was guilty of the murder of Mary Phagan; if so, did he state it

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L. S. Roan, Judge

doc3nt

positively and firmly; how did he make the statement? Give his language as well as you recollect it; if you do not recollect his language, what was the tenor of it?

(A). Yes, he was bitter.

7. (Q). Did you hear A. H. Henslee, in Monroe, Ga., between said dates, say anything about what the jury that tried Leo M. Frank for the murder of Mary Phagan would do if that jury did its duty; if so, what did he say, giving his language as nearly as you can recollect it, and if you cannot recall the exact language, state the tenor and effect of said language.

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8. (Q). How long did A. H. Henslee discuss the guilt of Leo M. Frank, in Monroe, Ga., between said dates, and how many times did he repeat the statement that he thought Frank was guilty, in your hearing?

(A). I was only present about 20 minutes. He was talking all the time I was there and stating that Frank was guilty of the murder of Mary Phagan.

9. (Q). At the time you heard the statements above answered or referred to, who else was present and who else heard these statements, if you know?

(A. J. J. Nunnally and some others whose names I do not now recall.

10 (Q). State in full what is your business occupation or occupations.

(A) Dentist. Practicing about 7 years am a graduate of Atlanta Dental College.

W. L. Ricker.

Georgia, Walton County.

Before me personally appeared W. L. Ricker, who being first duly sworn true answers to make to the above and foregoing questions, answered same as above set forth, said answer executed, sworn to and subscribed before me this Sept. 27th, 1913.

Clifford Walker,

Notary Public Fulton County, Ga.

232.

000320

Georgia,
Walton County.

State of Georgia,

Vs. In the Superior Court of Fulton County

Leo M. Frank. Georgia.

Written questions to be propounded to J. J. Nunnally, Esq., W. L. Ricker, Esq., Virgil Harris, Esq., and _____

xzx x x x x x x x x xxx

1 (Q). Have you examined the attached clipping from the Atlanta Georgian of August 23, 1913, and particularly the likeness in said clipping of A. H. Henslee?

(A). Yes.

2. (Q). Do you know A. H. Henslee?

(A). Yes.

3. (Q). Do you recall whether or not A. H. Henslee was in Monroe, Ga. between the time of the murder of Mary Phagan, as reported in the papers, and the time of the commencement of the trial of Leo M. Frank for the murder of Mary Phagan; to-wit- July 28, 1913.

(A). He was.

4. (Q). Did you hear A. H. Henslee make any statements in connection with the guilt of Leo M. Frank of the murder of Mary Phagan, and if so, what were those statements?

What impressed me was that Henslee was the most vehement in his expressions as to the guilt of Leo M. Frank of the murder of Mary Phagan of any person I had heard talk about it.

The Phagan murder was at the time, the particular topic of conversaton generally; a great many people were discussing it, and many were denouncing Frank as guilty particularly traveling men Henslee was the most bitter of any.
For about 2-1/2 hours in my place of business Henslee argued Franks [illegible] in this murder case; in talking about the outcome of the case, he made the statement, which to the best of my recollection was That if the jury should turn Frank out, he (Frank) would not get out of Atlanta alive.

233.

L. D. Ryan, Jury

000341

5 (Q). Did you hear A.H. Henslee, in Monroe, Georgia, between said dates, make any statements as to what he believed about the guilt of Leo M. Frank of the murder of Mary Phagan; if so, what were those statements?

(A). Yes, he believed him guilty.

6. (Q). Did A. H. Henslee, in Monroe, Georgia, between said dates, in your presence, and hearing, say he thought Leo M. Frank was guilty of the murder of Mary Phagan; if so, did he state it positively and firmly; how did he make the statement? Give his language as well as you recollect it; if you do not recollect his language, what was the tenor of it?

(A). He was very vehement as stated, there was no doubtfrom what he said that it was his conviction that Frank was guilty.

7 (Q). Did you hear A. H. Henslee, in Monroe Georgia, between said dates, say anything about what the jury that tried Leo M. Frank for the murder of Mary Phagan would do if that jury did its duty; if so, what did he say, giving his language as nearly as you can recollect it, and if you cannot recall the exact language, state the tenor and effect of said language.

I only recall that, to the best of my recollection, he said that if the jury did turn Frank aloose, Frank would never get away alive.

L. S. Roan, Judge.

8. (Q). How long did A. H. Henslee discuss the guilt of Leo M. Frank in Monroe, Georgia, between said dates, and how many times did he repeat the statement that he thought Frank was guilty, in your hearing?

(A). About 2-1/2 hours, according to my recollection. He made the statements repeatedly; it might have been only 2 hours.

9 (Q). At the time you heard the statements above answered or referred to, who else was present and who else heard these statements, if you know?

(A). Dr. W. L. Ricker, and at times during the period there were others but their names I don't recall.
My partner Mr. Harris was out of the City.

10. (Q). State in full what is your business occupation, or occupations.

(A). A member of the firm of Nunnally and Harris, composed of

J. J. Nunnally and Virgil Harris, dealers in buggies, wagons and live stock. Also Vice President W. H. Nunnally Co., general supplies and merchandise

J. J. Nunnally.

Georgia, Walton County.

Before me personally appeared J. J. Nunnally who, being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth, said answers executed, sworn to, and subscribed before me this Sept. 27th, 1913.

Clifford Walker.

Notary Public Walton County, Ga.

J. J. Nunnally, Judge

Certificate of the Court.

The recitals of fact contained in the original motion for new trial, and in the one hundred and three grounds of the foregoing amended motion for new trial (The same being all the grounds of said original and all the grounds of said amended motion) are hereby approved as true, and the court has identified all the exhibits and they are made part of said motion for new trial. Oct. 31st, 1913.

L. S. Roan,

J. S. C. St. Mt. Ct.

Filed in office this Oct. 31, 1913.

John H. Jones, Deputy Clerk.

(ORDER OVERRULING MOTION.)

After considering the above and foregoing motion and amended motion and affidavits submitted by the State the motion for a new trial is hereby overruled and denied.

This October 31, 1913.

L. S. Roan,

Judge Superior Court Stone Mountain Circuit,

Presiding.

000321

STATE OF GEORGIA) Murder.
(
VS.) Fulton Superior Court.
(
LEO M. FRANK.) Trial: July 28, to Aug . 21, 1913.

CHARGE OF THE COURT.

Gentlemen: of the Jury:

This bill of indictment charges Leo M. Frank with the offense of murder. The charge is that Leo M. Frank, in this county, on the 26th day of April, of this year, with force and arms, did unlawfully and with malice aforethought kill and murder one Mary Phagan by then and there choking her, the said Mary Phagan, with a cord placed around her neck.

To this charge made by the bill of indictment found by the grand jury of this county recently empanelled Leo M. Frank, the defendant, files a plea of not guilty. The charge as made by the bill of indictment on the one hand and his plea of not guilty filed thereto form the issue, and you, gentlemen of the jury, have been selected, chosen and sworn to try the truth of this issue.

Leo M. Frank, the defen ant, commences the trial of this issue with the presumption of innocence in his favor, and this presumption of innocence remains with him to shield him and protect him until the State shall overcome it and remove it by evidence offered to you, in your hearing and presence, sufficient in its strength and character to satisfy your minds beyond a reasonable doubt of his guilt of each and every material allegation made by the bill of indictment. I charge you, gentlemen, that all of the allegations of this indictment are material and it is necessary for the State to satisfy you of their truth by evidence that convinces your minds beyond a reasonable doubt of his guilt before you would be authorized to find a verdict of guilty. You are not compelled to find, from the evidence, his guilt beyond any doubt, but beyond a reasonable doubt, such a doubt as grows out of the evidence in the case, or for want of evidence, such a doubt as a reasonable and impartial mind would entertain about matters of the highest importance to himself after all reasonable efforts to ascertain the truth. This does not mean a fanciful

doubt, one conjured up by the jury, but a reasonable doubt.

Gentlemen, this defendant is charged with murder. Murder is defined to be the unlawful killing of a human being, in the peace of the State, by a person of sound memory and discretion, with malice aforethought, either express or implied.

Express malice is that deliberate intention unlawfully to take away the life of a fellow-being, which is manifested by external circumstances capable of proof,

Malice shall be implied where no considerable provocation appears, and where all of the circumstances of the killing show an abandoned and malignant heart.

There is no difference between express and implied malice except in the mode of arriving at the fact of its existence. The legal sense of the term "malice" is not confined to particular animosity to the deceased, but extends to an evil design in general. The popular idea of malice in its sense of revenge, hatred, ill will, has nothing to do with the subject. It is an intent to kill a human being in a case where the law would neither justify nor in any degree excuse the intention, if the killing should take place as intended. It is a deliberate intent unlawfully to take human life, whether it springs from hatred, ill will or revenge, ambition, avarice or other like passion. A man may form the intent to kill, do the killing instantly, and regret the deed as soon as done. Malice must exist at the time of the killing. It need not have existed any length of time previously

When a homicide is proven, if it is proven to be the act of the defendant, the law presumes malice, and unless the evidence should relieve the slayer he may be found guilty of murder. The presumption of innocence is removed by proof of the killing by the defendant. When the killing is shown to be the act of the defendant, it is then on the defendant to justify or mitigate the homicide. The proof to do that may come from either side, either from the evidence offered by the State to make out its case, or from the evidence offered by the defendant or the defendant's statement.

Gentlemen of the jury, you are made by law the sole judges of [illegible] of the witnesses and the weight of the testimony of each and every witness. It is for you to take this testimony as you have heard it, in connection with the defendant's statement, and arrive at what you believe to be the truth.

Gentlemen, the object of all legal investigation is the discovery of truth. That is the reason of you being selected, empanelled and sworn in this case - to discover what is the truth on this issue formed on this bill of indictment. Is Leo M. Frank guilty? Are you satisfied of that beyond a reasonable doubt from the evidence in this case? Or is his plea of not guilty the truth? The rules of evidence are framed with a view to this prominent end - seeking always for pure sources and the highest evidence.

Direct evidence is that which immediately points to the question at issue. Indirect or circumstantial evidence is that which only tends to establish the issue by proof of various facts sustaining, by their consistency, the hypothesis claimed. To warrant a conviction on circumstantial evidence, the proven facts must not only be consistent with the hypothesis of guilt, but must exclude every other reasonable hypothesis save that of the guilt of the accused.

The defendant has introduced testimony as to his good character. On this subject, I charge you that evidence of good character when offered by the defendant in a criminal case is always relevant and material, and should be considered by the jury, along with all the other evidence introduced, as one of the facts of the case. It should be considered by the jury, not merely where the balance of the testimony in the case makes it doubtful whether the defendant is guilty or not, but also where such evidence of good character may of itself generate a doubt as to the defendant's guilt. Good character is a substantial fact, like any other fact tending to establish the defendant's innocence, and ought to be so regarded by the jury. Like all other facts proved in the case, it should be weighed and estimated by the jury, for it may render that doubtful which otherwise would be clear. However, if the guilt of the accused is plainly proved to the satisfaction of the jury beyond a reasonable doubt, notwithstanding the proof of good character, it is their duty to convict. But the jury may consider the good character of the defendant, whether the rest of the testimony leaves the question of his guilt doubtful or not, and if a consideration of the proof of his good character, considered [illegible] a reasonable doubt in the minds of the jury as to the defendant's guilt, then it would be the duty of the jury to give the defendant the benefit of the doubt thus raised

Gentlemen, the object of all legal investigation is the discovery of truth. That is ~~the reason of~~ you being selected, empanelled and sworn in this case - to discover what is the truth on this issue formed on this bill of indictment. Is Leo M. Frank guilty? Are you ~~satisfied of that beyond a reasonable doubt from~~ the evidence in this case? Or is his plea of not guilty the truth? The rules of evidence are framed with a view to this prominent end - seeking always for pure sources and the highest evidence.

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The defendant has introduced testimony as to his good character. On this subject, I charge you that evidence of good character when offered by the defendant in a criminal case is always relevant and material, and should be considered by the jury, along with all the other evidence introduced, as one of the facts of the case. It should be considered by the jury, not merely where the balance of the testimony in the case makes it doubtful whether the defendant is guilty or not, but also where such evidence of good character may of itself generate a doubt as to the defendant's guilt. Good character is a substantial fact, like any other fact tending to establish the defendant's innocence, and ought to be so regarded by the jury. Like all other facts proved in the case, it should be weighed and estimated by the jury, for it may render that doubtful which otherwise would be clear. However, if the guilt of the accused is plainly proved to the satisfaction of the jury beyond a reasonable doubt, notwithstanding the proof of good character, it is their duty to convict. But the jury may consider the good character of the defendant, whether the rest of the testimony leaves the question of his guilt doubtful or not, and if a consideration of the proof of his good character, considered along with the evidence, creates a reasonable doubt in the minds of the jury as to the defendant's guilt, then it would be the duty of the jury to give the defendant the benefit of the doubt thus raised

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by his good character, and to acquit him. (Stephens case 81 Ga.589).

The word "character" as used in this connection, means that general reputation which he bore among the people who knew him prior to t the time of the death of Mary Phagan. Therefore, when the witnesses by which a defendant seeks to prove his good character are put upon the stand, and testify that his character is good, the effect of the testimony is to say that the people who knew him spoke well of him, and that his general reputation was otherwise good. When a defendant has put his character in issue, the State is allowed to attack it by proving that his general reputation is not good, or by showing that the witnesses who have stated that his character is good, have untruly reported it. Hence, the Solicitor General has been allowed to cross-examine the witnesses for the defense who were introduced to testify to his good character. In the cross examination of these witnesses, he was allowed to ask them if they had not heard of various acts of misconduct on the defendant's part. The Solicitor General had the right to ask any questions along this line he pleased, in order thoroughly to sift the witnesses, and to see if anything derogatory to the defendant's reputation could be proved by them. The Court now wishes to caution you that, although the Solicitor General was allowed to ask the defendant's character witnesses these questions as to their having heard of various acts of alleged misconduct on the defendant's part, the jury is not to consider this as evidence that the defendant has been guilty of any such misconduct as may have been indicated in the questions of the Solicitor General, or any of them, unless the alleged witnesses testify to it. Furthermore, where a man's character is put in evidence, and in the course of the investigation any specific act of misconduct is shown, this does not go before the jury for the purpose of showing affirmatively that his character is bad or that he is guilty of the offense with which he stands charged, but is to be considered by the jury only in determining the credibility and the degree of information possessed by those witnesses who have testified to his good character. (Henderson's Case, 5 Ga. App. 495(3)).

When the defendant hasput his character in issue, the State is allowed to bring witnesses to [illegible] and thereby to disprove the testimony of those who have stated that it is good. The jury is allowed to take this testimony, and have the right to consider it along with all the other evidence introduced on

000331

the subject of the general character of the defendant, and it is for the jury finally to determine from all the evidence whether his character was good or bad. But a defendant is not to be convicted of the crime with which he stands charged, even though, upon a consideration of all the evidence, as to his character, the jury believes that his character is bad, unless from all the other testimony in the case they believe that he is guilty beyond a reasonable doubt.

You will, therefore, observe that this is the rule you will be guided by in determining the effect to be given to the evidence on the subject of the defendant's character: If, after considering all the evidence pro and con, on the subject of the defendant's character, you believe that prior to the time of Mary Phagan's death he bore a good reputation among those who knew him, that his general character was good, you will consider that as one of the facts in the case, and it may be sufficient to create a reasonable doubt of the defendant's guilt, if it so impress your minds and consciences, after considering it along with all the other evidence in the case; and if it does you should give the defendant the benefit of the doubt and acquit him. However, though you should believe his general character was good, still if, after giving due weight to it as one of the facts in the case, you believe from the evidence as a whole that he is guilty beyond a reasonable doubt you would be authorized to convict him.

If you believe beyond a reasonable doubt from the evidence in this case that this defendant is guilty of murder, then you would be authorized in that event to say "We, the jury, find the defendant guilty". Should you go no further, gentlemen, and say nothing else in your verdict, the Court would have to sentence the defendant to the extreme penaltyfor murder, to-wit: to be hanged by the neck until he is dead. But should you see fit to do so, in the event you arrive at the conclusion and belief beyond a reasonable doubt from the evidence that this defendant is guilty, then, gentlemen, you would be authorized in that event, if you saw fit to do so, to say: "We, the jury, find the defendant guilty, and we recommend that he be imprisoned in the pen-

that,then the Court, under the law, would have to sentence the defendant to the penitentiary for life.

You have heard the defendant [illegible] this [illegible]

In Poor Condition

to make it under the law. It is not made under oath and he is not subject to examination or cross-examination. It is with you as to how much of it you will believe, or how little of it. You may go to the extent, if you see fit, of believing it in preference to the sworn testimony in the case.

In the event, gentlemen, you have a reasonable doubt from the evidence, or the evidence and the statement together, or either as to the defendant's guilt as charged, then give the prisoner the benefit of that doubt and acquit him; and in the event you do acquit him the form of your verdict would be: "We, the jury, find the defendant not guilty." As honest jurors do your utmost to reach the truth from the evidence and statement as you have heard it here, then let your verdict speak it.

Examined and approved as my charge in this case. Nov. 1,1913

(Signed) L. S. Roan,
J.S.C. St. Lt. Ct.

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V. 10852 4

Leo Frank

V

State of Georgia

For correspondence re Conley's 2v

Note to Clerk and/or Deputy Clerk

Please check all of this record, when someone uses it, to see that all of it is returned together

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STATE OF GEORGIA,) In Fulton Superior Court.
VS.) Trial begun July 28th, 1913.
LEO M. FRANK.) Judge L. S. Roan presiding.
Conviction of murder at July Term, 1913 of Fulton Superior Court, and motion for new trial.

BRIEF OF THE EVIDENCE.

MRS. J. W. COLEMAN, Sworn for the State.

I am Mary Phagan's mother. I last saw her alive on the 26th day of April, 1913, about a quarter to twelve, at home, at 146 Lindsey Street. She was getting ready to go to the pencil factory to get her pay envelope. About 11;30, she ate some cabbage and bread. She left home at a quarter to twelve. She would have been fourteen years old the first day of June, was fair complected, heavy set, very pretty, and was extra large for her age. She had on a lavender dress, trimmed in lace and a blue hat. She had dimples in her cheeks.

CROSS EXAMINATION.

The blue hat that is seen here is the hat the little girl had on that day. It had some pale blue ribbon and some flowers when she left home. It was a small bunch of little pink flowers right in the center. We live two blocks from the street car line. There is a store there at the the place she usually gets on the car kept by Mrs. Smith. Epps is a neighbor of ours. He was a friend of Mary's. He wasn't the special friend of hers.

RE-DIRECT EXAMINATION.

These are the clothes that she wore on that day (State's Exhibit "M").

GEORGE EPPS, Sworn for the State.

[illegible] live right around the corner

from Mary Phagan's home. I have known her about a year. The last time I saw her was Saturday morning coming to town on the English Avenue car. It was about ten minutes to twelve when I first saw her. I left her about seven minutes after twelve at the corner of Forsyth and Marietta Street. She had on that hat, ~~parcel~~ package and things when I left her. She was going to the pencil factory to draw her money. She said she was going to see the parade at Elkin-Watson's at two o'clock. She never showed up. I stayed around there until four o'clock and then I went to the ball game. When I left her at the corner of Forsyth and Marietta, I went under the bridge to get papers and she went over the bridge to the pencil factory, about 2 blocks down Forsyth Street. I sat with ~~Mary on the car~~.

CROSS EXAMINATION.

I know what time it was when I met Mary because I looked at Bryant and Keheley's clock, at the corner of Oliver and Bellwood, where I caught the car. She caught the car at Oliver and Lindsey and I caught the car at Oliver and Bell Street. She got on before I did, just one block before. I didn't say anything before the Coroner's jury about seeing a clock there, but I did see one. I know it was about seven minutes after twelve when I got off at Marietta Street because I can tell by the sun. I lived in the country and when I got off I looked at the sun. Mary got off the street car with me. No, she didn't ride on to Hunter Street. I am sure of that. She walked on down to the pencil factory on the right-hand side of Forsyth Street.

NEWT LEE, (colored), sworn for the State.

On the 26th day of April, 1913, I was night watchman at the National Pencil Factory. I had been night watchman there for about three weeks. When I began working there, Mr. Frank

had to do. I would have to get there at six o'clock on week days, and

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on Saturday evenings I have to come at five o'clock. On Friday the 25th of April, he told me "Tomorrow is a holiday and I want you to come back at four o'clock." "I want to get off a little earlier than I have been getting off." I got to the factory on Saturday about three or four minutes before four. The front door was not locked. I pushed it open, went on in and got to the double door there. I was paid off Friday night at six o'clock. It was put out that everybody would be paid off then. Every Saturday when I get off he gives me the keys at twelve o'clock, so that if he happened to be gone when I get back there at five or six o'clock I could get in, and every Monday morning I return the keys to him. The front door has always been unlocked on previous Saturday afternoons. After you go inside and come up about middle ways of the steps, there are some double doors there. It was locked on Saturday when I got there. Have never found it that way before. I took my key and unlocked it. When I went upstairs I had a sack of bananas and I stood to the left of that desk like I do every Saturday. I says like I always do "Allright Mr.Frank" and he come bustling out of his office. He had never done that before. He always called me when he wanted to tell me anything and said "step here a minute, Newt". This time he came up rubbing his hands and says, "Newt, I am sorry that I had you come so soon, you could have been at home sleeping, I tell you what you do, you go out in town and have a good time." He had never let me off before that. I could have laid down there in the shipping room and gone to sleep, and I told him that. He says, "You needs to have a good time. You go down town, stay an hour and a half and come back your usual time at six o'clock. Be sure and be back at six o'clock." I then went out the door and stayed until about four minutes to six. When I came back the doors were unlocked just as I left them and I went and says, "Alright Mr.Frank," and he says, "What time is it?" and I says, "It lacks two minutes to six." He says, "Don't

there is a few worked today and I want to change the slip."

It took him twice as long this time than it did the other times I saw him fix it. He fumbled putting it in, while I held the lever for him and I think he made some remark about he was not used to putting it in. When Mr. Frank put the tape in I punched and I went on down-stairs. While I was down there Mr. Gantt came from across the street from the beer saloon and says, "Newt, I got a pair of old shoes that I want to get upstairs to have fixed." I says, "I aint allowed to let anybody in here after six o'clock." About that time Mr. Frank come busting out of the door and run into Gantt unexpected and he jumped back frightened. Gnatt says, "I got a pair of old shoes upstairs, have you any objection to my getting them?" Frank says, "I don't think they are up there, I think I saw the boy sweep some up in the trash the other day." Mr. Gantt asked him what sort they were and Mr. Frank said "tans". Gantt says, "Well, I had a pair of black ones too." Frank says, "Well, I don't know", and he dropped his head down just so. Then he raised his head and says, "Newt, go with him and stay with him and help him find them" and I went up there with Mr. Gantt and found them in the shipping room, two pair, the tans and the black ones. Mr. Frank phoned me that night about an hour after he left, it was sometime after seven o'clock. He says, "How is everything?" and I says, "Everything is all right so far as I know", and he says, "Good-bye." No, he did not ask anything about Gnatt. Yes, that is the first time he ever phoned to me on a Saturday night, Gnatt

There is a light on the street floor just after you get in the entrance to the building. The light is right up here where that partition comes across. Mr. Frank told me when I first went there, "keep that light burning bright, so the officers can see in when they pass by." It wasn't burning that day at all. I

lit it at six o'clock myself. On Saturdays I always lit it, but weekdays it would always be lit when I got there. On Saturdays I always got there at five o'clock. This Saturday he got me there an hour earlier and let me off later. ~~There is a light~~ in the basement down there at the foot of the ladder. He told me to keep that burning all the time. It has two little chains to it to turn on and turn off the gas. When I got there on making my rounds at 7 P.M. on the 26th of April, it was burning just as low as you could turn it, like a lightening bug. I left it Saturday morning burning bright. I made my rounds ~~regularly every~~ half hour Saturday night. I punched on the hour and punched on the half and I made all my punches. The elevator doors on the street floor and office floor were closed when I got there on Saturday. They were fastened down just like we fasten them down every other night. When three o'clock came I went down the basement and when I went down and got ready to come ~~back I discovered the body there.~~ I went down to the toilet and when I got through I looked at the dust bin back to the door to see how the door was and it being dark I picked up my lantern and went there and I saw some thing laying there which I thought some of the boys had put there to scare me, then I ~~walked a little piece towards it and~~ I seen what it was and I got out of there. I got up the ladder and called up police station. It was after three o'clock. I carried the officers down where I found the body. I tried to get Mr. Frank on the telephone and was still trying when the officers came. I guess I was trying about eight minutes. I saw Mr. Frank Sunday morning at about seven or eight o'clock. He was coming in the office. He looked down on the floor and never spoke to me. He dropped his head right down this way. Mr. Frank was there

and didn't say nothing while Mr. Darley was speaking to me. Boots Rogers, Chief Lanford, Darley, Mr. Frank and I were there when they opened the clock. Mr. Frank opened the clock and said the punches were all right, that I hadn't missed any punches. I punched every half hour from six o'clock until three o'clock, which was the last punch I made. I don't know whether they took out that slip or not. On Tuesday night, April 29th, at about ten o'clock I had a conversation at the station house with Mr. Frank. They handcuffed me to a chair. They went and got Mr. Frank and brought him in and he sat down next to the door. He dropped his head and looked down. We were all alone. I said, "Mr. Frank, it's mighty hard for me to be handcuffed here for something I don't know anything about." He said, "What's the difference, they have got me locked up and a man guarding me." I said, "Mr. Frank, do you believe I committed that crime," and he said, "No, Newt, I know you didn't, but I believe you know something about it." I said, "Mr. Frank, I don't know a thing about it, no more than finding the body." He said, "We are not talking about that now, we will let that go." If you keep that up we will both go to hell," then the officers both came in. When Mr. Frank came out of his office looking down and that Saturday he was rubbing his hands. I have never seen him rubbing his hands that way before.

CROSS EXAMINATION.

I don't know how many times I told this story before. Everybody was after me all the time down there at the station house. Yes, I testified at the coroner's inquest and I told them there that Mr. Frank jumped back like he was frightened when he saw Mr. Gantt. I am sure I told them, and I told them that Mr. Frank jumped back and held his head down. I didn't say

before the coroner that he said he had given one of the pair of shoes of Mr. Gantt to one of the boys, they got that wrong. On Saturdays I had to wake up usually and get to the factory at twelve o'clock. This time Mr. Frank told me to get back at four. I did say before the coroner that he was looking down when he come out of his office. I told them also that there was a place in that building where I could go to sleep, but they didn't ask me where .

When you come in the front door of the factory, you can go right on by the elevator and right down into the basement, anybody could do it. The fact that the double doors on the steps were locked wouldn't prevent anybody from going in the basement. That would only prevent anybody from upstairs from going into the basement, unless they went by the elevator or by unlocking those double doors. All of the doors to the factory were unlocked when I got back there Saturday afternoon about six o'clock, the first floor,the second floor,the third floor and the fourth floor. Anybody could come right in from the street and go all over the factory without Mr.Frank in his office knowing anything about it. The doors are never closed at all. That is a great,big,old,rambling place up there. The shutters,the blinds to the factory were all closed that day because it was a holiday,excepting two or three on the first floor which I closed up that night. It's a very dark place when the shutters are closed.That is why we have to burn a light.There is a light on the first floor near the clock,it burns all the time because that is a dark spot. There are two clocks,one punches to a hundred,the other punches to two hundred,because there are more than a hundred employees. I punch both of them. About Mr. Frank and Mr. Gantt, they had had

a difficulty and I knew that Mr. Frank didn't want him in there. Mr. Frank had told me "Lee, I have discharged Mr. Gnatt, I don't want him in here, keep him out of here," and he had said, "when you see him hanging around here, watch him." That is the reason I thought Mr. Frank was startled when he saw Mr. Gantt. Mr. Gantt is a great big fellow, nearly seven feet. When he went out I watched him as he went to the beer saloon and I went on upstairs. He left the factory about half past six. I went through the machine room every time I made a punch that night. I went to the ladies dressing room every half hour, that night until three o'clock. I went all over the building every half hour, excepting the basement. I went down to the basement every hour that night, but not all the way back. Mr. Frank had instructed me to go over the building every half hour and he said go down in the basement once in awhile. He said go back far enough to see the door was closed. He told me to look out for the dust bin because that is where we might have a fire and to see that the back door is shut and to go over all the building every half hour. No, he didn't give me any different instructions on that Saturday, he didn't tell me not to go in the basement or in the metal department. He allowed me to carry out the instructions just like I had been doing before. Yes, If I had gone back to find out whether that door was closed or not , I would have found the body, but I could see if the door was open, because there was a light back there. No, it wasn't open that night. It was shut when I found the body. It was about ten minutes after I telephoned the police that they arrived. When I was down there I was close enough to the door to see it was shut, there was a light in front of it. There was no light

between the body and the door, It was dark back there. The body was about sixty feet from that door. If the back door had been open I could have seen that big light back there in the alley. The back door was closed when I found the body. The first time I went down the basement that night was seven o'clock. I went just a little piece beyond the dark, so I could see whether there was any fire down there. That's what I was looking for, Yes I could tell whether the door was open from there. No, I didn't go back as far as they found the body, I didn't go back that far at all during the night. The reason I went that far back when I saw the body was because I went to the closet. There are two closets on the second floor, one onthe third floor and one on the fourth floor. I didn't see the lady's hat or shoe when I went down to that little place with my lantern, nor the parasol. My lantern was dirty. I was sitting down there, after I had punched, on the seat, set my lantern on the outside. When I got through I picked up my lantern, I walked a few steps down that way, I seed something over there, about that much of the lady's leg and dress. I guess I walked about three or four feet, or five or six. I guess the body was about ten feet from the closet. As to what made me look in that direction from the closet, because I wanted to look that way. I picked up the lantern to go down there to see the dust bin, to see whether there was any fire there. The dust bin was to the right of me. When I was sitting down there the dust bin was not entirely hid behind the partition. I could see where the dust came down. The balance of the night in order to see whether there was any fire in the dust bin or not I went twenty or twenty-five feet from the scuttle-hole, and when I

was down in the closet I had to go at least ten feet to see whether or not there was any fire in the dust bin. I wouldhave gone further if I hadn't discovered the body. When I saw the body, the closest I ever got to it was about six feet. I was holding my lantern in my hand. I just saw the feet. When I first saw it I was about ten feet from it. As to how far the body was from where I was sitting in the closet, it was not less than ten feet and not more than thirty. I stood and looked at it to see whether or not it was a natural body. When I first got there I didn't think it was a white woman because her face was so dirty and her hair was so crinkled and there were white spots on her face. When the police came back upstairs they said it was a white girl. I think I reported to the police that it was a white woman. She was lying on her back with her face turned kinder to one side. I could see her forehead. I saw a little blood on the side of her head that was turned next to me. The blood was on the right side of her head. I am sure she was lying on her back. Mr. Frank had told me if anything serious happened to call up the police and if anything like fire to call up fire department. I already knew the number of the station house. I did say at the coroner's inquest that it took Mr. Frank longer to put the tape on this time than it did before. I did not say it took twice as long at the cornner's inquest, because they didn't ask me. I didn't pay any attention to him the first time he put the tape on. The reason the last time I know it took him longer because I held the lever and had to move it backwards and forwards. When I was in the basement one of the policemen read the note that they found. They read these words, "The tall, black, slim negro did this, he will try to [illegible] the night" and when they got to the wo[illegible]night" I said "They must be trying to put it off on me." I didn't say "Boss, that's me."

the way back in the basement, to a partition on the left, leading from the elevator. The basement is about twenty feet wide. The negro lead the way back about one hundred fifty feet and we found the body. The girl was lying on her face, not directly lying on her stomach, with the left side on the ground, the right side up just a little. We couldn't tell by looking at her whether she was white or black, only by her golden colored hair. They turned her over and her face was full of dirt and dust. They took a piece of paper and rubbed the dirt off of her face, and we could tell then that it was a white girl. I pulled up her clothes and we could tell by the skin of her knee that she was a white girl. Her face was punctured, full of holes and was swollen and black. She had a cut on the left side of her head as if she had been struck and there was a little blood there. The cord was around her neck, sunk into the flesh. She also had a piece of her underclothing around her neck. The cord was still tight around her neck. The tongue was protruding just the least bit. I began to look around and found a couple of notes. The cord was pulled tight and had cut into the flesh and tied just as tight as it could be. The under clothing around the neck was not tight. There wasn't much blood on her head. It was dry on the outside. I struck my finger under the hair and it was a little moist. This scratch pad (State's Exhibit "H") was also lying on the ground, close to the body. The body was lying with the head towards Forsyth Street, the head being near the partition. I found the notes under the sawdust, lying near the head. The body was that of Mary Phagan The scratch pad was lying near the notes. They were all right close together.

(Witness indicates on diagram of the State where body was

RE-DIRECT EXAMINATION.

The first time I saw Mr. Frank put any tape on, he didn't say anything about it being any trouble. The last time he put it on, he said something about that he wasn't used to putting it on. I was holding the lever there and he got in on twice and he had put it on wrong and he would have to slip it out and put it back. When Mr. Frank came out rubbing his hands, he came out of his inner office into the outer office and from there in front of the clock, I did not go down in the basement as far as the boiler during the night, except when I discovered the body.

The officers talked to me the whole time. I didn't get to sleep hardly, day or night. Just the time I would get ready to go to sleep, here they was after me. Then I would go back to my cell, stay a while and thenanother would come and get me. They carried me where I could sleep, but they wouldn't let me stay there long enough to sleep. I didn't get no sleep until I went over to the jail,and I didn't get no sleep at the jail for about two weeks. That was before the Coroner's inquest, when I was first arrested. When I went back to the jail I was treated nicely. As to who talked to me longer Mr. Frank or Mr. Black, Mr. Black did. Mr. Arnold talked to me longer than Mr. Frank did on April 29th. In the southwest corner is some toilets for men and women.

L. S. DOBBS, Sworn for the State.

I am a sergeant of police. On the morning of April 27th, at about 5;25 a call came from the pencil factory that there was a murder up there. We went down in Boots Rogers' automobile. When we got there the door was locked. We knocked on the door and in about two minutes the negro came down the steps and opened up the door and said there was a woman murdered in the basement. We went through a scuttle hole, a small trapdoor. The negro led

the way back in the basement, to a partition on the left, leading from the elevator. The basement is about twenty feet wide. The negro lead the way back about one hundred fifty feet and we found the body. The girl was lying on her face, not directly lying on her stomach, with the left side on the ground, the right side up just a little. We couldn't tell by looking at her whether she was white or black, only by her golden colored hair. They turned her over and her face was full of dirt and dust. They took a piece of paper and rubbed the dirt off of her face, and we could tell then that it was a white girl. I pulled up her clothes and we could tell by the skin of her knee that she was a white girl. Her face was punctured, full of holes and was swollen and black. She had a cut on the left side of her head as if she had been struck and there was a little blood there. The cord was around her neck, sunk into the flesh. She also had a piece of her underclothing around her neck. The cord was still tight around her neck. The tongue was protruding just the least bit. I began to look around and found a couple of notes. The cord was pulled tight and had cut into the flesh and tied just as tight as it could be. The under clothing around the neck was not tight. There wasn't much blood on her head. It was dry on the outside. I stxuck my finger under the hair and it was a little moist. This scratch pad (State's Exhibit "H") was also lying on the ground, close to the body. The body was lying with the head towards Forsyth Street, the head being near the partition. I found the notes under the sawdust, lying near the head. The body was that of Mary Phagan The scratch pad was lying near the notes. They were all right close together.

(Witness indicates on diagram of the State where body was

found and identifies different parts of the building on the diagram. Witness states that diagram is a (State's Exhibit A) fair representation of the parts identified by him, i.e., main floor and stairs, basement, boiler, partition in basement, spot where notes and body was found,and of the entire building.

CROSS-EXAMINATION.

We arrived at the factory a out 3;30. Lee told us it was a white woman. It took us sometime to determine whether it was a white woman or not. We didn't know until the dust was removed from her face and we pulled up the clothes and looked at the skin. We did not know it prior to that time. We had a lantern with us. One of the officers had a flashlight. Both of the notes were near her head. I don't think they were over six or eight inches apart. No, the one written on the scratch pad was not attached to the pad when I found it. It was laying about ten or twelve inches from it, right close together, and about eight or ten inches from her head was the furthest note. I found the white one first, on the white pad. I discovered the notes on the white paper and the scratch pad about the same time. It was possibly five or ten minutes before I found the other. There was a pile of trash near the boiler where this hat was found and paper and pencils were down there too. The hat was on the trash pile, so was the shoe., They were right close together on the trash pile. Everything was gone off of it, ribbons and all. It looked like she had been dragged by her feet on her face. I thought I found indications that she had been dragged in the basement, but I couldn't be positive. As to whether Newt Lee could have seen the body from where he was standing, I would think that he could have seen the feet, and the bulk of the body, he couldn't hardly have seen the head. I don't think he could have seen

enough of it to have seen what it was without coming up to it. I made an experiment in the day time to see whether he could see the body or not, and I found he could see the feet, you could see the bulk. Unless he was looking directly for someone I don't think he could see it. The place where I thought I saw someone dragged was right in front of the elevator, directly back. It began immediately in front of the elevator, right at the bottom of the shaft. The hat was possibly nearer the elevator than the shoe. That was a dirt floor and cinders on it scattered over the dirt. I thought the places on her face had been made from dragging. I think I saw a little blood on the underclothing. I did not testify before the Coroner that the blood ran a little when we moved the body, I didn't say it was liquid. The blood was dry. The little trail where I ~~through~~ straight showed the body was dragged went straight on down where the gi rl was found. It was a continuous trail. The finger joints on her hand worked a little. Back door was shut, staple had been pulled. The lock was locked atill, but the staple had been drawn out. It was a sliding door with a bar across the door, but the bar had been taken down. It looked like the staple had been recently drawn. I was reading one of the notes to Lee, with the following words: "A tall black negro did this, he will try to lay it on the night" and when I got to the word "night", Lee says, "That means the night watchman." I had just said the "night" and he said "That means the night watchman." I think the underclothes were torn, not cut, but I am not positive.

RE-DIRECT EXAMINATION.

It was about one hundred fifty feet from the ladder to where we found the body. The ribbon I found was not on the hat, it was on the hair. We made another experiment at night

to see whether Newt Lee could have seen the body from where he stood. We placed a bulk about the size of an ordinary body about the same position that this body was found in and you could see the bulk of the body by looking carefully by standong at the spot Newt Lee said he had seen it. A man couldn't get down that ladder with another person. It is a difficult matter for one person to get through the scuttle hole. The signs of dragging that I saw was right at the bottom of the elevator shaft, on the south side of the elevator. The signs of dragging came right around the elevator straight back east of the ladder, it started east of the ladder. A man going down the ladder to the rear of the basement would not go in front of elevator where dragging was. The hasp appeared to have been pulled straight out of the door, on the inside, it was not bent. The body was cold and stiff. Hands folded across the breast. I didn't find any blood on the ground or on the sawdust around where the body was found. Yes, the hasp is bent the least bit. When we got there Sunday morning, I think the elevator was on the second floor. We tried to make Lee run the elevator, but he said he couldn't do it.

FURTHER RE-DIRECT.

I found the handkerchief about ten feet towards the rear beyond the body on a sawdust pile.

RE-CROSS EXAMINATION.

I found it possibly ten or fifteen minutes after we found the body. The handkerchief was bloody just like it is now.

RECALLED FOR THE STATE.

The trap door leading up from the basement was closed when we got there. There was cobwebs and dust back there.

J. N. STARNES, Sworn for the State.

I am a city officer. Went to the pencil Company's place of business betweem five and six o'clock, April 27th. The Pencil Company is located in Fulton County, Georgia, and that's where the body was found.

The staple on the back door looked as if it had been prized out with a pipe pressed against the wood. There was a pipe there that fitted the indentation on the wood. I called Mr.Frank on the telephone, and told him I wanted him to come to the pencil factory right away. He said he hadn't had any breakfast. He asked where the night watchman was. I told him it was very necessary for him to come and if he would come I would send an automobile for him, and I asked Boots Rogers to go for him. I didn't tell him what had happened, and he didn't ask me. Mr. Frank appeared to be nervous. This was indicated by his manner of speaking to Mr. Darley, he was in a trembling condition. I was guarded with him in my conversation over the phone. About a week afterwards I went to the factory and had the night watchman, Mr. Hendricks, to show me about the clock. He took a new slip and put it in the clock and punched the slip all the way around in less than five minutes (State's Exhibit P). I got some cord on the second floor of the pencil factory, the knots in those cords were similar to the knots in this cord (State's Exhibit O). On the floor right at the opposite corner, what might be called the Northwest corner of the dressing room, on Monday morning, April 28th, I saw splotches that looked like blood about a foot and a half, or two feet, from the end of the dressing room, some of which I chipped up. It looked like splotches of blood and something had been thrown there and in throwing it had spread out and splattered. There was no great amount of it. I should judge that the area around these spots was a foot and a half. The splotch looked as if something had been swept over it, some white substance. There is a lot of that white stuff in the metal department.It looked like blood. I found a nail fifty feet this side of the metal room,toward the elevator on the second floor that looked like it had blood on the top of it. It was between the office and the double doors. I chipped two places off on the back

door which looked like they had bloody finger prints. I don't know when Frank was arrested. I don't think he was arrested on Monday. He was asked to come to the station house on Monday. It takes not over three minutes to walk from Marietta Street at the corner of Forsyth Street across the viaduct and through Forsyth Street down to the pencil factory. Lee was composed at the factory, he never tried to get away. The door to the stairs from the office floor to third floor was barred when I first went up there. No. 11 on diagram (State's Exhibit A) is the toilets.

CROSS EXAMINATION.

I am guessing about the time. It wouldn't take over five minutes to get off the car, walk to the pencil factory, walk in, walk up the stairs and back into Mr.Frank's office. The hasp is bent a little. I heard Boots Rogers testify at the Coroner's inquest and I testified twice. I did not correct any statement at the Coroner's inquest that Boots Rogers made. I am the prosecutor in this case. I cannot give the words of the conversation of the telephone message between myself and Mr. Frank. I could be mistaken as to the very words he used. It was just a casual telephone conversation. I don't know that the splotches that I saw there were blood. The floor at the ladies dressing room is a very dark color. I saw cord like that in the basement, but it was cut up in pieces. I saw a good many cords like that all over the factory. I never found the purse, or the flowers or the ribbon on the little girl's hat. This diagram (State's Exhibit A) is a correct diagram of second floor and basement of Pencil Company and other places.

RE-DIRECT EXAMINATION.

I was guarded in what I said over the phone to Mr.Frank, though it was just a conversation between two gentlemen. These pieces of wood look like what I chipped off the floor. I turned them over to Chief Lanford.(Referring to State's Exhibit "E").

RECALLED FOR THE STATE.

I saw Mr.Rosser at the Coroner's inquest. I never heard him say anything throughout the hearing.

W. W. ROGERS, sworn for the State.

I am now connected with Judge Girardeau's court. I was at the station house Saturday night, April 26th, and went to the National Pencil Company's place of business. It was between five and five thirty that I heard Mr. Starnes have a conversation over the phone. I heard him say, "If you will come I will send an automobile after you." It took us five or six minutes to get out to Mr. Frank's residence at 86 E. Georgia Avenue. Mr. Black was with me. Mrs. Frank opened the door. She wore a heavy bath robe. Mr. Black asked if Mr. Frank was in. Mr. Frank stepped into the hall through the curtain. He was dressed for the street with the exception of his collar, tie, coat and hat. He had on no vest. Mr. Frank asked Mr. Black if anything had happened at the factory. Mr. Black didn't answer. He asked me had anything happened at the factory. I didn't answer. Mr. Frank said, "Did the night watchman call up and report anything to you?" Mr. Black said, "Mr. Frank you had better get your clothes on and let us go to the factory and see what has happened." Mr. Frank said, that he thought he dreamt about 3 A.M. in the morning about hearing the telephone ring. Mr. Black said something about whiskey to Mrs. Frank in Mr. Frank's presence. Mrs. Frank said Mr. Frank hadn't had any breakfast and would we allow him to get breakfast. I told Mr. Black that I was hungry myself. Mr. Frank said let me have a cup of coffee. Mr. Black in a kind of sideways, said, "I think a drink of whiskey would do him good," and Mrs. Frank made the remark that she didn't think there was any whiskey in the house. Mr. Frank seemed to be extremely nervous. His questions were jumpy. I never heard him speak in my life until that morning. His voice was a refine voice, it was not coarse. He was rubbing his hands when

he seemed to be excited then he came through the curtains. He moved about briskly. He asked questions in rapid succession, but gave plenty of time between questions to have received an answer. Mr. Frank and Mr. Black got on the rear seat and I took the front seat and as I was fixing to turn around, one of us asked Mr. Frank if he knew a little girl by the name of Mary Phagan. Mr. Frank says: "Does she work at the factory?" abd I said, "I think she does." Mr. Frank said, "I cannot tell whether or not she works there until I look on my pay roll book, I know very few of the girls that work there. I pay them off, but I very seldom go back in the factory and I know very vew of them, but I can look on my pay roll book and tell you if a girl by the name of Mary Phagan works there." One of us suggested that we take Mr. Frank by the undertaking establishment and let him see if he knew this young lady. Mr. Frank readily consented, so we stopped at the telephone exchange, Mr. Frank , Mr. Black and myself got out and went in the undertaking establishment. I saw the corpse. The corpse was lying in a little kind of side out room to the right of a large room. The light was not lit in this little room where the body was laying, and Mr. Gheesling stepped in ahead of me and went around behind the corpse and lit the light above her head and her head was lying then towards the wall. I stepped up on the opposite side of the corpse with a door to my left. Mr. Gheesling caught the face of the dead girl and turned it over towards me. I looked then to see if anybody followed me and I saw Mr. Frank step from outside of the door into what I thought was a closet, but I have afterwards found it was where Mr. Gheesling slept, or where somebody slept. There was a little single bed in there. I immediately turned around and came back out in front of the office. I didn't see Frank

look at the corpse. I don't remember that Mr. Frank ever followed me in this room. He may have stopped on the outside of the door, but my back was toward him and I don't know where he s stopped. Mr. Gheesling turned the head of the dead girl over towards me and I looked around to see who was behind me and I saw Mr. Frank as he made that movement behind me. He didn't go into the closet as far as I could see, but he got out of my view. He could have looked at the corpse from the time that Mr. Gheesling was going around behind, but he could not have seen her face because it was lying over towards the wall. The face was away from me and I presume that was the cause of Mr. Gheesling turning it over. There was some question asked Mr. Frank if he knew the girl, and I think he replied that he didn't know whether he did or not but that he could tell whether she worked at the factory by looking at his pay roll book. As we were leaving Mr. Frank's house, Mr. Frank asked Mrs. Frank to telephone Mr. Darley to come to the factory. Mr. Frank was apparently still nervous at the undertaking establishment, he stepped lively. It was just his general manner that indicated to me that he was nervous. I never saw Mr. Frank in my life until that morning. After we got out of Mr. Frank's house and was in my car, was the first time Mr. Frank had been told that the young lady was named Mary Phagan and that there had been any murder committed at the factory. From the undertakers we went to the pencil factory in my car. We went into Mr. Frank's office, he went up to the safe, turned the combination, opened the safe, took out his time book, laid the book down on the tabe, ran his finger down until he came to the name Mary Phagan, and said, "Yes, Mary Phagan worked here, she was here yesterday

to get her pay." He said, "I will tell you about the exat time she left here. My stenographer left about twelve o'clock, and a few minutes after she left, the officeboy left and Mary came in and gother money and left." He said she got $1.20 and he asked whether anybody had found the envelope that the money was in. Frank still seemed to be nervous like the first time I seen him. It was just his quick manner of stepping around and his manner of speech like he had done at the house that indicated to me that he was nervous. He then wanted to see where the girl was found . Mr. Frank went around by the elevator, where there was a switch box on the wall and Mr. Frank put the switch in. The box was not locked. Somebody asked him if he was used to keeping the switch box locked. He said they had kept it locked up to a certain time until the insurance company told him that he would have to leave it unlocked, that it was a violation of the law to keep an electric switch box locked. We then stepped on the elevator. He still stepped about lively and spoke up lively answering questions, just like he had always done. After we got on the elevator, he jerked at the rope and it hung and he called Mr. Darley to start it and we all stepped out of the elevator. Mr. Darley came and pulled at the rope two or three times and the elevator started. As to whether anybody made any statement down in the basement as to who was responsible for the murder, I think Mr. Frank made the remark that Mr. Darley had worked Newt Lee for sometime out at the Oakland plant and that if Lee knew anything about the murder that Darley would stand a better chance of getting it out of him than anybody else. After we came back from the basement it was suggested that we go to the station house and as we started out Mr. Frank says, "I had better put in a new slip in hadn't I Darley?" Darley told him yes to put in a slip. Frank took his

keys out, unlocked the door of the right-hand clock and lifted out the slips, looked at it and made the remark then the slip was punched correctly. Mr. Darley and Newt Lee was standing there at the time Mr. Frank said the punches had been made correctly. Mr. Frank then put in a new slip, closed the door, locked it and took his pencil and wrote on the slip that he had already taken out of the machine, "April 26, 1913." I looked at the slip that Mr. Frank took out (Defendant's Exhibit I), the first punch was 6:01, the second one was 6:32 or 6:33, I glanced all the way down and there was a punch for every number. He took the slip back in his office. While we were walking through the factory Mr. Frank asked two or three times to get a cup of coffee. As to what Mr. Frank said about the murder, I don't know that I heard him express himself except down in the basement. The officers showed him where the body was found and he made the remark that it was too bad or something to thateffect. When we left the factory to go to police headquarters, Newt Lee was under arrest. I never considered Mr. Frank as being under arrest at that time. There had never been said anything to him in my presence about putting him under arrest. Mr. Frank's appearance at the station house was exactly like it was when I first saw him. He stepped quickly, when the door of the automobile was open, he jumped lightly off Mr. Darley's lap, went up the steps pretty rapid.

CROSS EXAMINATION

I never saw Mr. Frank until that morning. I don't know whether his natural movements ar manner of speech were quick or not. We didn't know whether the girl was a white girl or not until we rubbed the dirt from the child's face and pulled down her stocking a little piece. The tongue was not sticking out, it was wedged between the teeth. She had dirt in her eye and

and the piece of undershirt was loose over her hair.

mouth. The cord around her neck was drawn so tight it was sunk in her flesh. I don't know whether Mr. Frank went up-stairs or not after we reached his house. I think he called to his wife to get him his collar and tie. He got his coat and vest some place, but I don't know where. At the time Mrs. Frank was calling Mr. Darley, Mr. Frank was putting on his collar and tie down in the reception hall. We were at the house 15 or 20 minutes. After Mrs. Frank had said some thing about Mr. Frank getting his breakfast before he went, Mr. Black said something about a drink would do good. Mrs. Frank then called her mother, who said that there wasn't any liquor in the house, that Mr. Selig had an acute attack of digestion the night be-fore and used it all up. Mr. Frank readily consented to go to the undertakers with us. When we got in the car we told him it was Mary Phagan and he said he could tell whether she was an employee or not by looking at his book, that he knew very few of the girls. Yes, anybody facing the door of the little chapel at the undertakers could have seen the corpse. As to whether I know that Mr. Frank didn't see the corpse, he could have got a glance at the whole corpse, but when Mr. Gheesling turned the face over no one could have got a good look at the face unless they stepped in the room. Mr. Gheesling turned the young lady's face directly toward me, Mr. Frank was standing somewhere behind me, outside of the room. I turned around to see if Mr. Frank was looking. I don't know that he didn't get a glance at the corpse, but no one but Mr. Gheesling and I at this moment stepped up and looked at the little girl's face. What Mr. Frank and Mr. Black saw behind my back, I can't say. I don't say that Mr. Frank stepped into that dressing room, but he passed out of my view. So did Mr. Black. Mr. Gheesling had a better view of Mr. Black and Mr. Frank than I did, becausemy back was

to them and Mr. Gheesling was looking straight across the body at them. Mr. Frank had no difficulty in unlocking the safe when we went back to the factory. The elevator we went down on is a freight elevator, makes considerable noise. It stops itself when it gets to the bottom. I don't think it hits the ground. She was lying on herface with her hands folded up. Her face was turned somewhat toward the left wall. A bruise on the left side of her head, some dry blood in her hair. One of her eyes were blackened. There were several little scratches on her face. Some body worked her arms to see if they were stiff. The arms worked a little bit. The joints in her arms worked just a little bit. When we first went down the basement we stayed down there about 20 or 25 minutes. During that time neither the shoe, the hat, nor the umbrella had been found. In the elevator shaft there was some excrement. When we went down on the elevator, the elevator mashed it. You could smell it all around. It looked like the ordinary healthy man's excrement. It looked like some body had dumped naturally; that was before the elevator came down. When the elevator came down afterwards it smashed it and then we smelled it. As to the hair of the girl any one could tell at first glance that it was that of a white girl.

RE-DIRECT EXAMINATION.

The body wasn't lying at the undertakers where it could have been seen from the door.

RE-CROSS EXAMINATION.

At the moment the face wasturned towards me, I didn't see Mr. Frank but I know a person couldn't have looked into the faceunless he was somewhere close to me. I was inside and Mr. Frank never came into that little room.

RE-DIRECT EXAMINATION.

When the face was turned towards me, Mr. Frank stepped out of my visidn in the direction of Mr. Gheesling's sleeping room.

MISS GRACE HICKS, Sworn for the State.

I knew Mary Phagan nearly a year at the pencil factory She worked on the second floor. I identified her body at the undertakers Sunday morning, April 27th. I knew her by her hair. She was fair skinned, had light hair, blue eyes and was heavy built, well developed for her age. I worked in the metal room, the same room she worked in. Mary's machinewas right next to the dressing room, the first machine there. They had a separate closet for men and a separate one for ladies on that floor. There was just a partition betweer them. In going to the office from the closets they would pass the dressing room and Mary's machine within two or three feet. Mr. Frank, during the past twelve months, would pass through the metal department looking around every day. Sometimes I would see him talking to some of the men in the office at the clocks. He came back to the metal room to see how the work was getting on. The metal is kept within a little closet back under the stair steps, I asked Mr. Quinn, not Mr. Frank, if the metal had come. Saturday at twelve o'clock is the regular payday, but the week of April 26th, most of the employees got paid off on Friday night between six and seven o'clock. I hadn't worked there since Wednesday. Mr. Quinn called me up and told me that pay-day would be Friday. The metal had not come from Monday to Saturday. Mary didn't work after Monday of that week.

CROSS EXAMINATION:

Standing at the time clock you can't see in to Mr.Frank's private office. A person wouldn't see from Mr. Frank's office any one coming in or out of the building. I worked at the factory five years. In that time, Mr. Frank spoke to me three times. Mary Phagan worked at the factory with me for about a

year in the same department and I never saw Mr. Frank speak to Mary Phagan or Mary Phagan speak to Mr. Frank. When Mr. Frank came through the metal department he never spoke to any of the girls; just went through and looked around. The three times Mr. Frank spoke to me were as follows. He was showing a man around and I was laying on my arm mighty near asleep and he says you can run this machine asleep can't you, and I said, "Yes, sir." Then another time I asked him for a quarter and he loaned me a quarter. The next time I met him on the street he tipped his hat to me. Mr. Frank knew my face or he wouldn't have spoken to me on the street. The floor in the metal department is awful dirty. The white stuff that they use back there gets all over the floors. Mr. Darley is General Manager and Foreman who employes thehelp. Mary Phagan's hair was darker than mine. She weighed about 115 pounds. Some times we sit over at themachine and comb our hair and some times when I want to curl my hair with a poker or anything, I go over there to the table right by the window and light the gas and curl my hair. Magnolic Kennedy's hair is nearly the color of Mary Phagan's. ~~Schiff put off on Friday, April 25th.~~ The pay is given employes from a window in the paking department. There is paint in the polishing room, just across from the dressing room. The door of the polishing room is a few feet across frm the dressing room. No paint is kept in the metal room. I have seen drops of paint on the floor. I have seen it leading from the door straight across from the dressing room out to the cooler where the women come out to get water. The floor all over the factory is diry and greasy. And after two or three days you can't hardly tell what is on the floor after it gets mixed with the dirt and dust. Frank Helen Ferguson

Friday, April 25, when we were paid off

000367

JOHN R. BLACK, Sworn for the State.

I am a city policeman. I don't know the details of the conversation between Mr. Starnes and Mr. Frank over the 'phone. I didn't pay very much attention ot it. I went out to Mr.Frank's house with Boots Rogers. Mrs.Frank came to the door. Mrs. Frank had on a bath robe. I stated that I would like to see Mr. Frank and about that time Mr. Frank stepped out from behind a curtain. His voice was hoarse and trembling,and nervous and exdited. He looked to me like he was pale. I had met Mr. Frank on two different occasions before. On this occasion he seemed to be nervous in handling his collar. He couldn't get his tie tied, and very rapid in asking questions in regard to what had happened. He wanted to know if he would have time to get something to eat, to get some breakfast. He wanted to know if something had happened at the pencil factory and if the night watchman had reported it, and he asked this last question before I had time to answer the first. He kept insisting for a cup of coffee. When we got into the automobile as Mr. Rogers was turning around Mr. Frank wanted to know what had happened at the factory, and I asked him if he knew Mary Phagan and told him that she had been found dead in the basement of the pencil factory. Mr. Frank said he didn't know any girl by the name of Mary Phagan, that he knew very few of the employees. I suggested to Mr. Rogers that we drive by the undertakers. In the undertaking establishment Mr. Frank looked at her. He gave a casual glance at her and stepped aside. I couldn't say whether he saw the face of the girl or not. There was a curtain hanging near the room and Mr. Frank stepped behind the curtain. He could get no view from behind the curtain. He walked behind the curtain and came right out. Mr.Frank stated as we left the undertaking establishment that he didn't know the girl but he believed he had paid her off on Saturday. He thought he recognized her being at the factory on Saturday by the dress she wore,but he

could tell by going over to the factory and looking at his cash book. At the Pencil factory Mr.Frank took the slip out,looked over it and said it had been punched correctly. On Monday or Tuesday following Mr.Frank stated that the clock had been mispunched three times. This slip was turned over to Chief Lanford on Monday. I saw Mr.Frank take it out of the clock and went back with it toward his office. I don't know of my own personal knowledge that it was turned over to Chief Lanford Monday. When Mr.Frank was down at police station on Monday morning Mr.Rosser and Mr.Haas were there. About 8 or 8;30 o'clock,Monday morning,Mr.Rosser came in police headquarters. That's the first time he had counsel with him. That morning Mr.Haslett and myself went to Mr.Frank's house and asked him to come down to police headquarters. About 11;30 Monday Mr.Haas demanded of Chief Lanford that officers accompany Mr. Frank out to his residence and search his residence.Mr.Haas stated in Mr.Frank's presence that he was Mr.Frank's attorney anddemanded to show that there was nothing left undone, that we go out to Mr.Frank's house and search for anything that we might find in connection with the case. On Tuesday night Mr.Scott and myself suggested to Mr.Frank to talk to Newt Lee. Mr.Frank spoke well of the negro,said he had always found him trusty and honest. They went in a room and stayed from about 5 to 10 minutes alone. I couldn'thear enough to swear that I understood what was said. Mr. Frank stated that Newt still stuck to the story that he knew nothing about it. Mr.Frank stated that Mr.Gantt was there on Saturday evening and that he told Newt Lee to let him to and get the shoes but to watch him, as he knew the surroundings of the office. After this conversation Gantt was arrested. Frank made no objections to talking to Newt Lee.Mr.Frank was nervous on Monday. After his release Monday he seemed very jovial. On Tuesday night, Frank said at station house that there was nobody at factory at six o'clock, but Newt Lee,and that Newt ought to know more about it,as it was his duty to look over factory every 30 minutes. Also that Gantt was there Saturday evening and he left him there at 6 o'clock and that he and Gantt had some trouble previous to discharge of Gantt. That he at first refused to allow Gantt to [illegible] told him he left a pair of shoes there.

CROSS EXAMINATION.

When I said that Mr. Frank was released I spoke before I thought. I retractedit on cross-examination. I don't know that Mr. Rosser was at the police station between 8 and 8:30 Monday morning, I said that to the best of my recollection. I wouldn't swear Mr. Rosser was there. I heard Mr. Rosser say to Mr. Frank to give them a statement without a conference at all between Mr. Frank and Mr. Rosser. I said that we wanted to have a private talk with Mr. Frank without Mr. Rosser being present. I wanted to talk to Mr. Frank without Mr. Rosser being present. ~~I wanted to talk~~ While I was at the Coroner's inquest Mr. Frank answered every question readily. I wouldn't swear positively, but to the best of my recollection I had a conversation with Mr. Frank on two previous occasions. I don't remember anything that caused me to believe When I met Mr. Frank on previous occasions he was ~~not~~ nervous, nothing unusual about him. I heard the conversation Mr. Starnes had over the telephone with Mr. Frank early that morning. It was about a quarter to six, or a quarter past six. I think we got to theundertakers about 6:20. As to the reason why I didn't tell Mr. Frank about the murder when I was inside the house, but did tell him as soon as he got in the automobile, I had a conversation with Newt Lee and I wanted to watch Mr. Frank and see how he felt about the murder. Mr. Frank didn't go upstairs and put his collar and cravat on. Mrs. Frank brought him his collar and tie, I don't know where she got them. He told her to bring his collar and tie and he got his coat and hat. I don't know whether he went back to his home or not. He put his collar and tie on right there. I don't know where he got his coat and vest at. I don't know what sort of tie or collar he had. He put his collar and tie on like anybody else would Tied it himself. I don 't know whether Mr. Frank finished

dressing upstairs or not, I couldn't see him when he went behind thosecurtains. We stayed at the Frank home about ten minutes. At the undertaking establishment I was right behind Mr. Frank. He was between me and the body. I saw the face when the undertaker turned her over. Yes, Mr. Frank being in front of me had an opportunity to see it also. No, Mr. Frank didn't go into that sleeping room, Mr. Frank went out just ahead of me. When we went backto the pencil factory Mr. Frank went to the safe and unlocked it readily at the first effort. He got the book, put it on the table, opened it at the right place, ran his finger down until he came to thename of Mary Phagan an d says, "Yes this little girl worked here and I paid her $1.20 yesterday." We went all over the factory that day. Nobody saw that blood spot that morning. I guess there must have been thirty people there during that day. Nbody saw it. I was there twice that day. Mr. Starnes was there with me. He didn't call attention to any blood spots. Chief Lanford was there, and he didn't discover any blood spots. Mr. Frank was at thepolice station on Monday from 8:30 until about 11:30. Mr. Frank told me he had discharged Mr. Gantt on account of shortage and had given orders not to let him in the factory. As regards Mr. Frank's linen, Mr. Haas said he was Mr. Frank's attorney and requested that we go to Mr. Frank's house and look over the clothes he had worn th e wook before and the laundry too Yes, we went out there and examined it. Mr. Frank had had no opportunity to t elephone his house from the time we mentioned it until we got out there. He went with us and showed us the dirty linen. I examined Newt Lee's house. I found a bloody shirty in the bottom of a d othes barrel there on Tuesday

RE-DIRECT EXAMINATION.

Mr. Frank had told me that he didn't think Newt Lee had told all he knew about the murder. He also said after looking over the time sheet and seeing that it hadn't been punched correctly that that would have given Lee an hour to have gone out to his house and back. I don't know when he made this last statement. I don't remember whether that wasbefore or after I went out to Lee's house and found the shirt. We entered his house with a skeleton key. It was after Frank told me about the skips in the punches. The shirt is just like it was the day I found it. The blood looks like it is on both sides of the shirt.

RE-CROSS EXAMINATION.

I don't know whether I went out to Lee's house before or after Mr. Frank suggested the skips in the time slips. I don't like to admit it, but I am so crossed up and worred that I don't know where I am at, but I think to the best of my knowledge it was Monday that Frank said that the slips had been changed.

MRS. J. W. COLEMAN, recalled for the State.

Mary carried a little silver mesh bag the day she left her home, made of German silver. This looks like the handkerchief that she carried. (State's Exhibit "M").

J. M. GANTT, sworn for the state.

From June last until the first of January I was shipping clerk at the National Pencil Company. I was discharged April 7th by Mr. Frank for alleged shortage in the pay roll. I have known Mary Phagan when she was a little girl. Mr. FRank knew her too. One Saturday after noon she came in the office to have her time corrected, and after I had gotten through Mr. Frank [illegible] pretty well." No

not told him her name. I used to know Mary when she was a little girl, but I havenot seen her up to the time I went to work for the factory. My work was in the office and she worked in the rear of the building on the same floor in the tip department. After I was discharged , I went back to the factory on two occasions. Mr. Frank saw me both times. He made no objection to my going there. One girl used to get pay envelopes for another girl with Mr. Frank's knowledge. There was an alleged shortage in the pay roll of $2.00, Mr. Frank came to see me aboout it and I told him I didn't know anything about it, and he said he wasn't going to make it good, and I said I wasn't, and he then discharged me. Prior to my being discharged Mr. Frank told me he had the best office force he ever had I was the time keeper. Mr. Frank could sit at his desk and see the employees register at the time clock if the safe door was closed. Mr. Frank did not fix the clock frequently, possibly two or three times. One April 26, about six o'clock I saw Newt Lee sitting out in front of the factory and I remembered that I left a pair of shoes up there and I asked Newt Lee what about my getting them, and he saidhe couldn't let me up. I said Mr. Frank is up there, isn't he? because I had seen him in the window from across the street, and while we were standing there talking, in two or threeminutes, Mr. Frank was coming down the stairway and got within fifteen feet of the door when he saw me and when he saw me he kind of stepped back like he was going to go back, but when he looked up and saw that I was looking at him he came on out, and I said "Howdy, Mr. Frank ," andhe kind of jumped again. I told him I had a pair of shoes up there I would like to get and he said, "Do you want to go with me, or will Newt Lee be all right?" and he kind of studied a little bit, and said, "What kind of shoes [illegible] there?" and I said "They were tan shoes," and he said, "I think I saw a negro sweeping them up the other day." And I

said, "Well, I have a pair of black ones there too," and he kind of studied a little bit, and said "Newt, go ahead with him and stay with him until he gets his shoes," and I went up there and found both pair right where I had left them. Mr. Frank looked pale, hung his head and nervous and kind of hesitated and stuttered like he didn't like me in there somehow or other.

CROSS EXAMINATION.

I testified at the coroner's inquest. I admit I did not testify about Frank's knowing Mary very well there, that has been recalled to my mind since I was arrested on Monday April 28th at 11 o'cl ock and held until Thursday night about six.

MRS. J. A. WHITE, sworn for the state.

I saw my husband at the pencil factory at 11:30. I stayed there until about 10 minutes to 12. I left him there and came back about 12:30 and I left again about 1 o'clock. When I got there at 11:30 I saw Miss Hall, the stenographer, Mr. Frank and two men. I asked Mr. Frank if I could see my husband Mr. White, Mr. Frank was in the outside office then. He said I could see him and sent word by Mrs. Emma Freeman for him to come downstairs. My husband came to the foot of the stairs on the second floor. I talked to him about 15 minutes and went on out. I returned about 12:30. Mr. Frank was in the outside office standing in front of the safe. I asked him if Mr. White had gone back to work. He jumped li ke I surprised him and turned and said, "Yes." It wasn't much of a jump. I went upstairs then to see Mr. White. Harry Denham was with him working on the fourth floor. They werehammering. It was not a continuous noise they were making. I heard the hammer not more than once or twice. Mr. Frank came upstairs while I was up there, somewhere about 1 o'clock. I know it was before one because at one I was at McDonald's furniture store, four or

five blocks from the factory. I got there a few minutes after one. Mr. Frank told Mr. White if I wanted to get out before 3 O'clock, to come on down because he was going to leave and lock the door, that I had better be ready to go as soon as he got his coat and hat. I went on out and as I passed he was sitting in the outside office writing at a table. As I was going on down the steps I saw a negro sitting on a box close to the stairway on the first floor. Mr. Frank did not have his coat or hat on when I passed out.

CROSS EXAMINATION.

I left the factory about 1 o'clock. I wouldn't say that it was positively ten minutes to one. While I was talking to my husband at the factory, Miss Corinthia Hall, May Barrett and her daughter were there. Mrs. Barrett had been upstairs and her daughter came down afterwards. Miss Hall and Mrs. Freeman left first, Mrs. Barrett and her daughter left next and then I went. That was about ten minutes to twelve. I saw the negro sitting between the stairway and the door about five or six feet from the foot of the stairway. I wouldn't be able to identify him.

HARRY SCOTT, sworn for the State.

I am Superintendent of the local branch of the Pinkerton Detective Agency. I have worked on this case with John Black, city detective. I was employed by Mr. Frank representing the National Pencil Company. I saw Mr. Frank Monday afternoon, April 28, at the pencil factory. We went into Mr. Frank's privateoffice. Mr. Darley and a third party were with us. Mr. Frank said, "I guess you read in the newspapers about the horrible crime that was committed in this factory, and the direc-

tors of this company and myself have had a conference and thought that the public should demand that wehave an investigation made, and endeavor to determine who is responsible for this murder." and Mr. Frank then said he had just come from police barracks and that Detective Black seemed to suspect him of the crime, and he then related to me his movements on Saturday, April 26th, in detail. He stated that he arrived at the factory at 8 A.M., that he left the factory between 9:30 and 10 with Mr. Darley for Montag Bros. for the mail, that he remained at Montag Bros. for about an hour; that he returned to the factory at about 11 o'clock, and just before twelve o'clock, Mrs. White, the wife of Arthur White, who was working on the top floor of the building that day with Harry Denham, came in and asked permission to go upstairs and see her husband, Mr. Frank granted her permission to do so. He then stated that Mary Phagan came in to the factory at 12:10 P.M. to draw her pay; that she had been laid off the Monday previous and she was paid $1.20; that he paid her off in his inside office where he was at his desk, and when she left his office and went in the outer office, she had reached the outer office door, leading into the hall and turned around to Mr. Frank and asked if the metal had come yet; Mr. Frank replied that he didn't know and that Mary Phagan then he thought reached the stairway, and he heard voices, but he could not distinguish whether they were men or girls talking, that about 12:50 he went up to the fourth floor and asked White and Denham when they would finish up their work and they replied they wouldn't finish up for a couple of hours; that Mrs. White was up there at the time and Frank informed Mrs. White that he was going to lock up the factory, that she had betterleave;

Mrs. White preceded Mr. Frank down the stairway and went on

out of the factory as far as he knew, but on the way out, Mrs. White made the statement that she had seen a negro on the street floor of the building behind some boxes , and Mr. Frank stated that at 1:10 P.M. he left the factory for home to go to luncheon; he arrived at the factory again at 3 P.M., went to work on some financial work and at about four o'clock, the night watchman reported for work, as per Mr. Frank's instructions the previous day; that he allowed Newt Lee to go out and have a good time for a couple of hours and report again at six o'clock, which Newt did and at six o'clock when Lee returned to the factory , he asked Mr. Frank, as he usually did, if everything was all right, and Mr. Frank replied "Yes" and Lee went on about his business. Mr. Frank left the factory at 6:04 P.M. and when he reached the street door entrance he found Lee taking to Gantt, an ex-bookkeeper who Frank had discharged for thieving. Mr. Frank stated that he had arrived home at about 6:25 P.M. and knowing that he had discharged Gantt, he tried to get Lee on the telephone at about 6:30; knowing that Lee would be in the vicinity of the time clock at that time and couldhear the telephone ring; that he did not succeed in getting him at 6:30, but that he got him at seven; that he asked Lee the question if Gantt had left the factory and if everything was all right, to which Lee replied "Yes", and he hung up the receiver. Mr. Frank statedhe went to bed somewhere around 9:30.

After that Mr. Frank and Mr. Darley accompanied me around the factory and showed me what the police had found. Mr. Darley being the spokesman. We went first to the metal room on the second floor, where I was shown some spots supposed to be blood spots, they were already chipped up, and I was taken to a machine where some strands of hair were supposed to have

been found. From there we went down and examined the time clock and went through the scuttle hole and down the ladder into the basement, where I was shown where everything had been found. As to Mr. Frank's manner and deportment at the time we were in his office, he seemed to be perfectly natural. I saw no signs of nervousness. Occasionally between words he seemed to take a deep breath and deep sighs about four or five times. His eyes were very large and piercing. They looked about the same they do now. He was a little pale. He gave his narrative rather rapidly. as to whether he stated any fixed definite time as to hours or minutes, he didn't state any definite time as to when Mary Phagan came in, he said she came in at about 12;10. We furnished attorneys for Frank with reports. After refreshing my memory I now state that Mr. Frank informed me at the time I had that conversation with him that he herd these voices before 12 o'clock, before Mary Phagan came. He also stated during our conversation with him that Gantt knew Mary Phagan very well, that he was familiar and intimate with her. He seemed to lay special stress on it at the time. He said that Gantt paid a good deal of attention to her. As to whether anything was said by any attorney of Frank's as to our suppressing any evidence as to this murder, it was the first week in May when Mr. Pierce and I went to Mr. Herbert J. Haas' office in the 4th National Bank Building and had a conference with him as to the Pinkerton Agency's position in the matter. Mr. Haas stated that he would rather we would submit our reports to him first before we turned it over to the police and let them know what evidence we had gathered. We told him we would withdraw before we would adopt any practice of that sort, that it was our intention to work in hearty co-operation with the police.

I saw the place near the girls' dressing room on the office floor, fresh chips had already been cut out of the floor.

and I saw white smeared where the chips had been cut out and there were also some dark spots near the chipped out places. It was just as though somebody had taken a cloth and rubbed some white substance around in a circle, about eight inches in diam eter. This white stuff covered all of the dark spots. I didn't note any unusual signs ofnervousness about Frank in his office. There wasnUt any trembling or anything of that sort at that time, he was not composed. On Tuesday night, April 29, Balck Mr. FFrank and myself were together and Mr. Black told Mr. Frank that he believed Newt Lee was not telling all that he knew. I also said to Mr. Frank that Newt knew more than he was telling, and that as he was his employer, I thought he could get more out of the nigger than we could, and I asked him if he would consent to go into a room as employer and employee and try to get it out of him. Mr. Frank readily consented and we put them in a private room, they were together there for about ten minutes alone. When about ten minutes was up, Mr. Black and I entered the room and Lee hadn't finished his conversation with Frank and was saying "Mr. Frank it is awful hard for me to remain handcuffed to this chair," and Frank hung his head ~~thd entire time the negro was talking to him, and~~ finally in about thirty seconds, he said "Well, they have got me too." After that we asked Mr. Frank if he had gotten ~~anything~~ out of the negro and he said, "No, Lee still stuck to his original story." Mr. Frank was extremely nervous at that time. He was very squirmy in his chair, crossing one leg after the other and didn't know where to put his hands; he was moving them up and down his face, and he hung his head a great deal of the time while the negro was talking to him. He breathed very heavily and took deep swallows, and sighed and hesitated somewhat His eyes were about the same as they are now. That interview between Lee and Frank

took place shortly after midnight , Wednesday, April 30. On Monday afternoon, Frank said to me that the first punch on Newt Lee's slip was 6:33 P.M. and his last punch was 3 A.M. Sunday. He didn't say anything at that time about there being any error in Lee's punches. Mr. Black and I took Mr. Frank into custody about 11:30 A.M. Tuesday. April 29th. His hands were quivering very much, he was very pale. On Saturday May 3, I went to Frank's cell at the jail with Black and I asked Mr. Frank if from the time he arrived at the factory from Montag Bros. up until 12:50 P.M., the time he went upstairs to the fourth floor, was he inside of his office the entire time, and he stated "yes". Then I asked him if he was inside his office every minute from 12 o'clock until 12:30 and he said "Yes". I made a very thorough search of the area around the elevator and radiator and back in there. I made a surface search. I found nothing at all. I found no ribbon or purse, or pay envelope, or bludgeon or stick. I spent a great deal of time around the trap door and I remember running the light around the door way right close to the elevator, looking for splotches of blood, but I found nothing.

CROSS EXAMINATION.

Yes, I sent you this report as to what happened between Mr. Herbert J. Haas and myself "This afternoon Supt. H. B. Pierce and myself held a conference with Mr. Herbert Haas, at which ~~time~~ the Agency's position in the matter was discussed, and Mr. Haas stated they wanted to learn who the murderer was, regardless of who it involved." Mr. Haas told me that after I had told him we would withdraw from the case before we would not co-operate with the police. No, I did not

report that to you. I reported the motive of our conference. No, I did not say anything about Mr. Haas wanting us to do anything except locate the murderer. Yes, I talked to you afterwards and you also told me to find the murder, even if it was Frank. Mr. Haas had said to Mr. Pierce and me that he would rather that we submit our reports of evidence to him before we turned it over to the police. No, there was nothing said about not giving this to the police. I testified at the coroner's inquest as to what conversation I had with Mr. Frank. I did not give you in my report the details of Mr. Frank's morning movements, when he left home, arrived at the factory and went to Montag Bros., and returned to the factory. As to my not saying one word about Gantt being familiar with this little girl, that was just an oversight, that is all. No, I did not testify to that either at the coroner's inquest. I didn't put it in the report to you, because Gantt was released the next day and I didn't consider him a suspect. There was no reason for my not giving it to you. It was an oversight. I am representing the National Pencil Company, who employed me, and not Mr. Frank individually. It is true in my report to you with reference to the interview between me and Mr. Frank that I stated "I had no way of knowing what they said because they were both together privately in a room there and we had no way of knowing except what Lee told us afterwards." I now state that I did hear the last words of Lee. I didn't put in my notes that Gantt was familiar with Mary Phagan, I don't put everything in my notes and the Coroner didn't examine me about it either. No, I didn't tell the Coroner anything about Frank crossing his legs and putting his hands up to his face. I never went into detail down there. No, I didn't

mention his hanging his head. We always work with the police on criminal cases. No, I did not testify before the Coroner about any white stuff having been smeared over these supposed blood spots. I am not sure whether I got the statement about Mary Phagan being familiar with Gantt from Mr. Darley or Mr. Frank. Mr. Frank was present at the time. Mr. Frank told me when the little girl asked if the metal had come back that he said "I don't know." Itmay be true that I swore before the Coroner that in answer to that question from Mary Phagan as to whether the metal had come yet that Frank said, "No," and it is possible that I so reported to you. If I said "No," I meant "I don't know." I say now that Mr. Frank told me he left the factory at 1:10 P.M. If I reported to you that he told me he left at one o'clock, I made a very serious mistake. That is an oversight. Yes, I reported to the police before I reported to Mr. Haas or Mr. Montag.

RE DIRECT EXAMINATION.

Yes, our agency reported to the police about finding the club. I find it is in our report of May 15th. I don't know when it was reported I was out of town. I worked all through this case with Detective Black and every move he made was known to both of us. As to the stairway from the basement to the upper floor, there was a great deal of dust on the stairs and the dust didn't seem to be disturbed. This stairway is not in the picture, but is near the back door. I was nailed and closed.

MISS MONTEEN STOVER, sowrn for the State.

I worked at the National Pencil Company prior to April 26th, 1913. I was at the factory at five minutes after twelve on that day. I stayed there five minutes and left at ten minutes after twelve. I went there to get my money. I went.

in Mr. Frank's office. He was not there. I didn't see or hear anybody in the building. The door to the metal room was closed. I had on tennis shoes, a yellow hat and a brown rain coat. I looked at the clock on my way up, it was five minutes after twelve and it was ten minutes after twelve when I started out. I had never been in his office before. The door to the metal room is sometimes open and sometimes closed.

CROSS EXAMINATION.

I didn't look at the clock to see what time it was when I left home or when I got back home. I didn't notice the safe in Mr. Frank's office. I walked right in and walked right out. I went right through into the office and turned around and came out. I didn't notice how many desks were in the outer office. I didn't notice any wardrobe to put clothes in. I don't know how many windows are in the front office. I went through the first office into the second office. The factory was still and quiet when I was there. I am fourteen years old and I worked on the fourth floor of the factory. I knew the paying-off time was twelve o'clock on Saturday and that is why I went there. They don't pay off in the office, you have to go up to a little window they open.

RE-DIRECT EXAMINATION.

The door to the metal room is some times closed and sometimes open. When the factory isn't running the doon is closed.

R. P. BARRETT, sworn for the State.

I am a machinist for the National Pencil Company. I have been there about eight weeks. On Monday morning, April 28th, I found an unusual spot that I had never seen before at the west end of the dressing room on the second floor of the pendil

factory. That spot was not there Friday. The spot was about 4 or 5 inches in diameter and little spots behind these from the rear--6 or 8 in number. I discovered these between 6:30 and 7 o'clock Monday. It was blood. It looked like some white substance had been wiped over it. We kept potash and haskoline, both white substances, on this floor. This white stuff was smeared over the spots. It looked like it had been smeared with a coarse broom. There was a broom on that floor, leaning up against the wall. No, the broom didn't show any evidence of having been used, except that it was dirty. It was used in the metal department for cleaning up the grease. The floor was regularly swept with a broom of finer straw. I found some hair on the handle of a bench lathe. The handle was in the shape of an "L". The hair was hanging on the handle, swinging down. Mell Stanford saw this hair. The hair was not there on Friday. The gas jet that the girls sometimes use to curl their hair on is about ten feet from the machine where the hair was found. Machine Number is No. 10. It is my machine. I know the hair wasn't there on Friday, for I had used that machine up to quitting time, 5:30. There was a pan of haskoline about 8 feet from where the blood was found. The nearest potash was in vats in the plating department, 20 or 25 feet away. The latter part of the week I found a piece of a pay envelope (State Exhibit U) under Mary Phagan's machine. I have examined the area around the elevator on the main floor and I looked down the la dder and I never saw any stick. I did not find any envelope or blood or anything else there.

CROSS EXAMINATION.

I never searched for any blood spots before , until Miss Jefferson came in and said she understood Mary had been murdered

in the metal department, then I started to search right away; that was the only spot I could find; I could tell it was blood by looking at it. I can tell the difference between blood and other substances. I found the hair some few minutes afterward--about 6 or 8 strands of hair and pretty long. When I left the machine on Friday I left a piece of work in there. When I got back the piece of work was still there, It had not been disturbed. The machine was in the same post tion in which I left it Friday night, there was no blood under this machine. There is no number or amount on the envelope I found, and no name on it, just a little loop, a part of a letter. Yes I have been aiding Mr. Dorsey and the detectives search the building. Yes, Mr. Dorsey subpoenaedme to come to his office, it was a State subpoena. I gave him an affidavit.

MELL STANFORD, sworn for the State.

I have been working at the National Pencil company a little over two years. I swept the whole floor in the metal room of Friday, April the 25th. On Monday there after I found a spot that had some white haskoline over it, That wasn't thereon Friday when I swept between 9 and 12 o'clock. I use a small broom in sweeping. I saw a big cane broom standing by the waste metal room on Monday about six feet from where the blood was found. The spot looked to me like it was blood, with dark spots scattered around. It looked like the large broom had been used in putting the haskoline on the floor by the impressions or scratches of the cane in the floor.

CROSS EXAMINATION.

I was a sweeper in the metal room. Yes, they have regular negro sweepers there for the building. I swept it allup because the negro wasn't there. It took me from 9 till 12 to sweep the whole floor. I moved everything and swept everything. I swept under Mary Phagan's and Barrett's machine.

Next to the ladies' closet they storea lot of different things, mineral paints, barrels, boxes, all sorts of things. That's pat of the metal room where they are kept. I swept clear up to the doors of the toilets and clear up to the paint shop. It wasn't my duty to sweep where the machines are and where Mary worked but I did sweep there anyhow. I have done that several times before. There were paint spots in several different place s up there when I swept up Friday. These blood spots were right in front of the ladies dressing room. They led right up to the door.

MRS. GEORGE W. JEFFERSON, sworn for the State.

I work at theNational Pencil Company. We saw blood on the second floor in front of the girls dressing room on Monday. It was about as big as a fan, and something white was over it. I didn't see that blood there Friday. Yes, there are cords in the polishing room, used to tie pencils with. They are hung up on a post in the polishing room. The spots were dark red in color. These cords are taken off the pencils and we throw them on a nail. We don't untie the knots. This loop right here is in all of the cords. I work in the polishing room, polishing lead pencils. I have been working there five years. We use paint in there, maroon red, red line and bright red. Of course you can tell the bright red from maroon red and the red line from maroon red. That spot that I saw was not one of these three paints.

CROSS EXAMINATION.

Mr. Barrett and I discovered that spot there together. Yes, that is a dirty, greasy floor. You can see grease, but you don't see anything red on the floor--not in the metal room. You do in the polishing room. The paints don't come from the metal room. They are kept back in the other room. We carry the

paint back in bottles. Of course if a bottle would break the paint would get all over the floor. The white stuff there didn't hide the red at all. You could seeeit plaintly.

RE-DIRECT EXAMINATION.

The pencils are painted on the third floor. There isn't any paint used at all in the factory only in the polishing room, except on the third floor.

B. B. HASLETT, sworn for the state.

I went to Mr. Frank's house Monday morning after the murder about 7 o'clock. I went out there and got him and took him to the station house. He was at the station house two or three hours. I told him Chief Lanford wanted to see h m.

CROSS EXAMINATION.

I saw Mr. Rosser and Mr. Haas at the station house about 8:30 or 9 o'clock. Mr. Black and I both went out for Mr. Frank Monday morning. We took him to the station house and turned him over to Chief Lanford. They hadMr. Frank in there and a half dozen detectives, andMr. Haas and you were there. When we went out to Mr. Frank's house he went with us. As to whether he had to go or not, I suppose if he had resisted we would have taken him. It was not a question as to whether he wanted to go or not, but he didn't know he had to go. As to why two of us went out after him--two of us generally go together after anybody, because if he don't go voluntarily, he would go anyhow,--we would take him.

E. F. HOLLOWAY, sworn for the State.

I am day watchman at the National Pencil Factory--worked there two years. I was there on April 26th from 6:30 A.M. till 11:45. I look after the elevator and freight that come in

and out and people that come in and out. As to what I did to the elevator on that Saturday,I didn't do anything except that when Mr.White and Mr.Denham were working on the top floor,I started the elevator up and ripped up a plank for them. The elevator was locked when I sawed that plank for thembut when I left it was unlocked. I locked it Friday night when I left there. But I went off from there Saturday and forgot to lock it. When I made that affidavit for you on May 12,1913,I forgot to tell you that I did some sawing for Mr.White and Mr.Denham. The elevator was standing on the office floor when I left there Saturday. I left it standing right there. I had done some sawing for Mr.White and Mr.Denham just before I left and in talking to them,I went off and forgot to look it. In affidavit signed May 12,1913,in presence of Starnes Campbell and others, in answer to question "Is the power box kept locked or unlocked;" I will say I locked it Friday when I left there. I don't remember saying in this affidavit that if the elevator box was kept unlocked on account of insurance companies requiring it,that I never heard of it, that they always told me to look it, I don't remember any questions being asked me about any keys. I read and signed my name to that paper before I signed it. I don't remember stating that I locked it Saturday. I did say in that affidavit it is kept locked all the time. The reason I said at the Coroner's inquest that the elevator box was always locked and that I left it locked on Saturday was because I forgot to tell about that sawing. I did that sawing just before I left there Saturday. Friday evening I never heard Mr. Frank say anything to Newt Lee. When I left the factory at 11;45, on Saturday Mr. Frank said to me "You can go ahead if you want to; we will all go at noon." At about 9;30, Mr. Frank and Mr. Darley went over to Montag Bros. I have seen Gantt talking to Mary Phagan frequently. The stairs leading from the first floor into the basement are in good condition. They haven't been used this year. They have been nailed up all the year. The area on first floor around trap door down there was cleaned up about two weeks after the insurance people came over and went through the building.

CROSS EXAMINATION.

Mr. Denham and Mr. White were working there Saturday up

on the fourth floor. They were up there when I left the build-

ing. Anybody could have walked from the fourth floor to the second floor all day long; there was no obstruction. A man at the stairway on the third floor can see the second floor in front of the clock. The front doors were unlocked all the morning and they were still unlocked when I left. When Mr. Denham and Mr. White asked me to saw some timber for them that morning, I went and got the key andunlocked the motor that runs the elevator. I left it unlocked after that. Anybody could have started the elevator running then by throwing in the switch. I am familiar with the floor back there in the metal department. It is a very dirty, greasy, stained up floor--there isn't a worst one in town. Whenever you walk along there you will fall down if you are not very particular. The floor has never been washed the three years that I have been there. You see the analines and white stuff scattered all over the floor every day and the sweepers just sweep it along together. You see spots on the floor quite frequently. We work about 100 girls in the factory. Four or five of them work in the metal room. There is a lady's dressing room right there where they chipped up the spots, and right across from there is the toilet, not over six feet from it. I have seen blood spots frequently ever since I have been working there around the ladies toilets and the ladies dressing rooms; the foreladies would always tell me about it and I have often noticed it when we were working or sweeping or anything of the kind, and I would know what it meant. I would go back and have it cleaned. These spots that Barret claims to have found I don't recall having noticed before; they would not have attracted my attention. They were right on the way to the ladies dressing room. Yes, this man Barrett discovered mighty near everything

that was discovered in the building, hair, blood, and pay envelope. That is what he says. No, I have never seen Mr. Frank speak to Mary Phagan. I was at the factory at 6:30 Saturday morning. I was the first man that got there. Denhim and White came in about 7 o'clock and went up on the fourth floor. They were doing some work up there. I had to saw that plank for them. They told me that I would take them until about 3 o'clock. The office boy, Alonzo Mann, 13 or 14 years old, came in next. Mr. Frank came in about 8:30 or 8:45. He went right in his office, unlocked his safe and got out his books and went to work on them. Mr. Darley was the next one that came in and Miss Mattie Smith the next. She stayed about 10 minutes and went out again. I met Miss Corinthia Hall and Miss Emma Clark at the corner of Hunter and Borad coming toward the factory just as I was leaving. Miss Clark asked me if anybody was there--said she wanted her wrap, it was turning cold, and I said "yes, Mr. Frank will let you have it." There were several others came in that morning, but they came in while I was up stairs with Mr. White and Mr. Denham. There was no lock at all on the metal room door. Newt Lee closed up the building Friday. He looks after all the doors and windows plumb back to the back door in the basement. There were 7 or 8 negroes about the building, elevator boys and sweepers. On Saturdays they paid off at 12 o'clock, right at the clock. Mr. Frank would always be in his office attending to his books when they paid off. We put up a sign saying that the paying off would be done Friday night instead of Saturday, because Saturday was a holiday. We put four signs on every floor. Elevator shaft is closed by sliding doors. Anybody can raise them, they are not locked. It is very dark around the elevator shaft

have two clocks. One runs to 100 and the other runs from 100 to 200. Each employe has a number. That is the reason we have two clocks. When Miss Mattie Smith came in she discovered a mistake about her time by the time she reached the clock. Mr. Frank and Mr. Darley corrected it in the office and then she left. Mr. Frank got back from Montag's about 11 o'clock. He had with him the folder in which he carries his papers. Nobody was with him when he came back. He went right up into his office. The stenographer was in the outer office when he got there. These cords here are found laying around everywhere in the building. They come on every bundle of slats that come into the building. The pencils are tied up with those slats at the top floor, brought down by elevator, carried in the packing room and those strings are then put on them. They get in the trash every day and into the basement. It is impossible to keep them out. I did not see Mary Phagan or Monteen Stover. The negro Conley was familiar with the whole building, every part of it.

RE-DIRECT EXAMINATION.

White and Denham were working on the fourth floor about thirty feet from the elevator. On May 12, 1913, I told you that the elevator was locked because I forgot to tell you I done some sawing. I took the key out, left the elevator unlocked and took the key back and put it in the office. Mr. Darley got to the factory about 9 o'clock Saturday. Miss Mattie Smith got there about 9:10.

RE-CROSS EXAMINATION.

When I gave Mr. Dorsey that affidavit about looking the elevator I was telling more about my habit, the way I usually did it. I forgot to tell him about sawing those planks that

Saturday morning and the fact that I sawed those planks makes me know that I left the elevator unlocked. The elevator makes a good deal of noise when it starts and when it stops.

RE-DIRECT EXAMINATION.

I was on the second floor when all of these people came in the factory. Mr. Frank worked on his books until he got ready to go to Montags, I think it was about an hour. I checked freight with a one-legged drayman about 10:30, his wagon was right in front of the door.

N. V. DARLEY, sworn for the State.

My name is N. V. Darley. I am Manager of the Georgia Cedar Company , a branch of the National Pencil Company. I have charge of the manufacturing and labor in the Forsyth Street plant. Mr. Sig Montag is my superior. Mr. Frank and I are of equal dignity in the factory. I was at the National Company's factory on Saturday, April 26th. I saw Mr. Frank and left about 9:40 in the morning. I was there Sunday morning at about 8:20. I saw Mr. Frank that morning. Observed nothing unusual when I first saw him. When we started to the basement I noticed his hands were trembling. I observed that he seemed still nervous when he went to nail up the back door. When we started down to nail up the back door he made some remark about having on new clothes or some more clothes and he pulled his coat off to keep it from getting soiled. When we left the station house and started towards Bloomfields he told me why he was nervous. He said that he had not had breakfast and didn't get any coffee and that they had rushed him by Bloomfields, carried him in a dark room and turned the light on and he saw the girl instantly and that was why he was nervous. The elevator was unlocked. I don't know where the

Frank Stated to me in the basement that he thought that the

murder was committed in the basement. Mr. Frank stated that it looked easy for the staple to be pulled out and I agreed with him, because the staple looked black and it looked to me as if it had been pulled out before. On Monday Mr. Frank explained again about why he was nervous on Sunday morning. I heard him speak of the murder numerous times. When we started down the elevator Mr. Frank was nervous, shaking all over. I can't say positively as to whether his whole body was shaking or not, but he was shaking. Newt Lee seemed to be composed when I saw him at the factory. Mr. Frank could have driven the nails in the back door, but I thought I could do it with more ease. Mr. Frank looked pale Sunday morning. I think he seemed upset, but he did some things around the factory there that a man who was completely upset could not have done, I don't think. When riding down to the police station from the pencil factory Mr. Frank was on my knee, he was trembling. I saw the financial sheet on Sunday on Mr. Frank's desk. Mr. Frank picked it up in his hand. Gantt was at the factory three or four times after he was discharged. My recollection is that Frank said something about the financial sheet on Sunday. It was on May 3rd that Mr. Haas, the insurance man, asked that the factory be cleaned up on the Malsby side and on the other side. When my attention was called to it I noticed something that X looked like blood with something white over it at the ladies dressing room on Monday morning.

CROSS EXAMINATION.

Mr. Quinn called my attention to the blood spots, Barrett called Quinn's attention to it. Barrett showed me some hair on a lever of the lathe. It was 20 or 30 feet from Mary Phagan's machine on the north side of the room. There were

no blood spots on it. I don't think anybody could answer how many strands of hair Barrett found. They were wound around the lever. I don't think there were over 6 or 8 at the outside. It was pretty hard to tell the dolor. It is my understanding that Barrett has been doing most of the discovering done in the building. He has lost quite some time since the murder, and buys quite some extras and reads them. The white stuff partically hid the spots. It looked like there had been an attempt to hide them, but you could see the spots. It looked like the man who tried to hide them, if anybody did, made a smearing motion and left the spots showing. I saw no blood spots on Mary Phagan's machine. There are hundreds of pay envelopes distributed every week in the factory. The rule is that if a person goes outside of the factory and finds an envelope short we do not correct it. As the pay envelopes are distributed they take them and tear them off, just like this one. The employees take the money out and scatter the envelopes all over the factory. On the second floor where the metalroom is is the main place where you find the pay envelopes. I was present on Sunday morning when the time slip was taken out. I was looking over Mr. Frank's shoulder. Mr. Frank run it down the number side. This time slip (Defendant's Exhibit "I") looks like the one. Mr. Frank looked down the number side and said it was all right and I verified it. I didn't notice between 9:32 and 10:29 if there was any punch, or between 11:04 and 12, or between 2:03 and 3:01. I identify this (Exhibit 1 defendant) by the numbers 6:01 and 6:32. I look over the financial sheets every Saturday afternoon. The factory week runs from Friday morning till Thursday night. The financial sheet is usually completed about 5:30 Saturday afternoon. The financial sheet shows the week's operation of the

factory; the production of the factory; the different kinds of pencils that were produced. There are perhaps 75 or 80 different kinds, besides the special imprint pencils. Mr. Frank had to get all the data from the various departments of the factory, particularly the packing room. The cost of production was estimated most of the time as to the merchandise. The other things were real figures. Merchandise is bought by the month and he had to figure it up at the end of the month to get the average. To arrive at the profit that was made during the week he took the actual value of the pencil and the amount of expenses that was paid out for material, labor, etc. He had to get all the data, all the repots and make all those calculations. It usually took him from about half past two or three o'clock on Saturday until five-thirty, and some times later. This financial sheet (Defendant's Exhibit "2") is in Frak's handwriting and is the one I saw on his desk Sunday morning. I left the factory at 9:40 and he hadn't started the financial sheet then. He usually started the financial seet from 2:30 to 3 o'clock. I am familiar with Frank's handwriting. All of this financial sheet is in his handwriting. To get the figure 2765 1/2, net 2719 1/2, undem material, cost he had to look at how many labels had been used, how many boxes, whether they were carton or plain ones, partition, rubbers, amount of lead used and amount of slats used. He got the reports that gave him that data from the different departments of the factory. To arrive at that result is quite a calculation. It is my opinion that it took a skillful, clear-headed man to calculate that. Yes, I am familiar with the elements that enter into that calculation. To arrive at the net results of the figures just named, you [illegible] labels

boxes, whether carton or plain boxes, partition, whether it

is cheap lead or good lead. The 2765 1/2 means 2765 1/2 gross. Further on down you find the different items that make up that figure under the head of wrappers, leads, tips, etc. The next figure is under rubber, 720 gross at 6 1/2 ¢ . Those figures come from the plugging department or he can get them from the goods as they are delivered to the packing room, by knowing the styles and numbers, you can tell whether it is a tipped or untipped pencil. You get that from the shipping room and the other from the metal room. He arrives at the figures on the reports turned in. It requires a good deal of calculation, mostly multiplying. The next figure is under tips, 1374 gross at ten cents. He gets that from the packing room. The ten cents means what the tips cost to produce. That's a stipulated price. The next heading is lead, 747 gross at 15¢ and 1955 gross at ten cents. He has to go through these reports the same way exceptthe doesn't have to work the cost of that, it's taken care of in the account. He has to arrive at the number of gross, but the cost is fixed. The next item is supplies at 5¢ per gross, boxes 3771 at 2¢, assortment boxes 279 at 10¢ , wrappers 2535 at 1¢. He gets those reports from the boxes of the pencils in the packing room. He gets the reports as to the rubbers and the labels from the packing room. The cost per gross is fixed, but he has to figure out the quantity. The next item is assortment boxes, wrappers, skeletons. The next item, cartons. The next item is pay roll, Bell Street. The next, slats from the slat mills. As the slats are delivered from the slat mill, a report comes with it, and those reports are taken at the end of the week and added up. There are about five of those shipments during the week. He has to take the dates that accompany each shipment and add all that up at the end of the week. The next item is "pencils packed",(top of

sheet). There are 24 itemized here, and the word "jobs" implies I don't know how many different kind of jobs. There are 24 different kind of pencils. He puts them there as having been produced that week. He got the reports as to the quantity of each kind of pencil and had to tabulate all those reports and arrive atthe total of each kind. No, I don't think he had to figure out the cost of production of each kind, but he figures the quantity of each kind of pencil and shows its value on the sheet. Starnes and Black and Anderson and Dobbs were there on Sunday morning. We went all over the fa ctory. I don't remember about hearing of any blood being found on Sunday at all, There was a great deal of excitement there that morning. We see spots all over the factory floor. We have varnish spots, and people get their fingers cut, we have every color spots you can think of. I have been working in factories for 24 years. It is a frequent occurrence in establishments where a large number of ladies work that you will see blood spots around dressing rooms. I have seen them a good many times. I have seen it at this factory. Mr. Frank had on a brown suit on Saturday and Monday. On Sunday he had a different suit on I never noticed any scratches, marks or bruises on Mr. Frank on Sunday. There was a little girl in Mr. Frank's office on Saturday morning, by the name of Miss Mattie Smith, and her sister-in-law's time was wrong and Mr. Frank told her to wait a few minutes and he would straighten it out for her. She had been paid $3.10 too much, and she gave me back the money when she found it was wrong and I gave it to Mr. Frank and he said he was glad because it balanced his cash. She then started out of the factory and got to the stairway and she came back again and

girl will it do all right to straighten it Monday," and she said

"Yes." I then asked her how was her father, and she said, "My father is dying, I think". Then she spoke to me about getting some assistance from the office for burial expenses, and she commenced to cry and I walked down the steps with her to the front door. That was about 9:20. Mr. Frank stayed at the factory until 9:40, when we left together. We went on up to the corner of Hunter and Forsyth, took a drink of sodawater at Cruickshank's at the corner of Forsyth and Hunter. He left me then and started towards Montag's. That's the last I saw of him until Sunday morning. The elevator box was unlocked Sunday morning, and anybody could have pulled it open and started the elevator. The elevator makes some noise. It is driven by a motor. It makes more noise when it stops at the bottom that when it starts. There is nothing to stop it except when it hits the bottom. I have seen these cords that we tie up slats and pencils with in every part of the factory. I have raised sand about finding them in the basement; they go down in the garbage. There are several truck loads of waste and debris every day. The general cleaning up of the premises was had on Tuesday after the murder. The factory is five stories high, between 150 and 200 feet in length and 75 or 80 feet wide. It is an extremely dirty place. In some places the floor is gummed an inch thick, and in some parts of the metal room it is one eighth of an inch thick, it might not average that all over. It is always dark on the first floor, through the hall toward the elevator. On a cloudy day it is very dark. We keep a light burning there most of the time. I couldn't say whether we had cleaned up all the trash and rubbish around the factory, because there are corners and crevices which we don't usually get to. Saturday, April 26, was a d ark, bad, misty day, until about 9:30. It was cloudy most of the day. It was

cloudy most of the day. It was dark there around the elevator on the first floor and we had big heavy boxes piled up there. One of them must have been almost as large as apiano box. If a man got between those boxes, we would have had to hut to find him. It is very dark on the second floor between the clock and the metal room. It is dark behind the ladies dressing room and on the side next to the ladies toilet. As you go to the stairs from the metal room, it is very dark. A person sitting at Mr. Frank's desk in his office could not see anyone coming up those stairs. It would be impossible to see anyone coming up those steps from anywhere in Mr. Frank's innter office, you would have to go outside of it. There is no lock on the metal room doors. In the metal room there are a great many vats and a great many boxes and things containing stock and goods just south of the ladies dressing room. It is piled up very bad back there. Averaged anywhere from 2 to 6 or 8 feet in height. It isn't used at all except for storage. The metal room contains three or four large vats that have got lids on them. They are shallow, but they are large inside. They are about a foot and a half deep. Nobody is supposed to be in any part of the building on Sunday, that is the only time we don't have a watchman. The factory is supposed to be lockedup entirely. The elevator steel cables have some slack in them. It isn't like a stiff iron in them. It would shake when you catch hold of it. There are two cables, you pull the right one to come down and the left one to go up. You can catch it and shake it in your hand. Yes, Mr. Frank is a small , thin man, about 125 or 130 pounds. Yes, Mr. Dorsey served a subpoena on me to come down to his office. I didn't know that he did

 subpoenaed to come into court. They served two subpoenas on

me and sent for me one time. The first time I went there, Chief Lanford, Mr. Dorsey, Mr. Stephens and the stenographer was there. They all asked me questions. One would ask me a question and before I got that answered, another would ask me a question. The next time I went there, Mr. Dorsey, Mr. Starnes, Mr. Campbell and the stenographer were there. Mr. Dorsey did all the questioning this time. When Mr. Frank was engaged on his work in the factory he was very intent on his work, very earnest and industrious. I don't think a day passed at the factory that Mr. Frank did not get nervous. When anything went wrong he would wring his hands and I have seen him push his hands up through his hair. When things went wrong it would upset him. If anything out of the ordinary happened I have seen him a thousand times , I suppose, rub his hands. At a factory like this things don't usually go right all day, there is something wrong all the time. When anything went wrong it rattled him and he would frequently call on me to straighten it out. He would show the most nervousness when he would go over to Montag's with the mail, and he would raise sand about something and he would come back very nervous. If Mr. Frank saw anything going wrong inside the factory, he would refer the matter to me. I never saw Mr. Frank speak to Mary Phagan. I don't know whether he knew her or not. I didn't know we had a girl by that name in the factory until I found it out afterwards. The two men working up in the fourth floor all day Saturday could have come to the second floor into the metal room and down into the basement if they wanted to, they had the whole run of the factory. Yes, I have seen all kinds of papers down in the basement. The paper that note is written on is a blank order pad. It is either the carbon or white sheet, one is white and one is yellow. That kind of paper is liable to be

found all over the building for this reason, they write an order, and sometimes fail to get the carbon under it, and other times they have to change the order and tear it out and throw it in the waste basket in the office and from there it gets into the trash. That kind of little pad is used all over the factory. The foreladies make their memorandum on that kind of tablet. You will find them all around. It is one of the biggest wastes around the place. They are all o ver the building, and any man that worked around the factory or ran the elevator or swept up the different floors would be more likely to come across them than anyone else, because they are thrown on the floor. There was an order to keep the clock door locked, but on this occasion the key was lost and the d ock door was open. When I got there Sunday morning, the clock door was unlocked. Mr. Frank could not have unlocked it because the key was lost. With the clock door unlocked, anyone who understands the clock, could have punched for all night in five or ten minutes. I made the same mistake Mr. Frank made in thinking that all the punches had been made all right. I looked over the factory at noon today and compared it with some points on this picture (Exhibit A for State). This big space in the cellar appears to be short. Those s teps in the cellar are much longer in reality. The platform itself is about 15 feet long, and the incline is 17 feet , making 32 feet the length of it. The distance between the walls of Mr. Frak's office and the elevator shaft is 5 feet to 5 1/2 inches. The elevator shaft is ten feet, but on the picture the space between the elevator shaft and Mr. Frank's office looks almost as wide as the elevator shaft itself. One is ten feet and the other is 5 1/2. As to what occasions I recall seeing Mr. Frank nervous, [illegible] in one afternoon on a street car when

it ran over a little child. He came in about 2:30 and he couldn't work any more on his books until a quarter after four. He trembled just as much on that occasion as he did on the Sunday after Mary Phagan was killed. Another time I remember when I went over to the main factory and he and Mr. Montag had a fuss on the fourth floor. Mr. Montag hollered at him considerably and he was very nervous the rest of the evening , he shook and trembled. He says "Mr. Darley I just can't work" , and some of the boys told me he took some spirits of ammonia for his nerves. Everybody was excited in the factory that morning after Mary Phagan was killed. Starnes and Black and Rogers were there and it seems like they were all excited. Looked like everybody was worried. As to another mistake in the picture (State's Exhibit A), the bottom of the ladder in the basement is much closer to the elevator than what is shown on the picture. It is about 6 feet. On the picture it looks to be about 10 feet and the toilet in the basement is closerto the wall than the picture shows, it is right up against the wall. The picture doesn't show the Clarke Woodenware partition back of the elevator. The door to the Clarke Woodenware Company also is closer to the elevator than the picture shows. On the stairs from the first to the second floor there are double doors instead of single doors as shown on the picture. The picture shows up Frank's inner office a good d eal large r than the other office. As a matter of fact, the outher office is larger. The outer office is 12 feet 4 inches wide. The inter office ten feet 3. The picture shows a great big wide place for a door between the inside office and the outside office, making it look like a double door. That

is a representation to show a full view from Frank's desk into the hall, as a matter of fact it is a single door, standard size. It looks like it was drawn to open up a space to give as much view as possible out into the hall. The safe is shown to be about half its real size on this picture. On the picture it is shown to be about one-third the width of the door, as a matter of fact it is about the same size. When the safe door is open, it shuts off three-fourths of the view from Frank's office out into the hall, unless you stand up high enough to look over it. The picture also shows the south wall of the outer office on a line with the clock. The picture doesn't show up the wardrobe in the innter office, nor the two cabinets that are in there. I don't think it is a very accurate picture. It opens up Frank's inner office a whole lot better than it really opens up. Sitting at Frank's desk and looking out through the door towards the clock, in reality you have a looking space of only 25 inches. You can just see about four numbers on clock number 2. You could not see anywhere near the staircase, or in the neighborhood of it.

RE-DIRECT EXAMINATION.

I felt nervous from the time they told me the girl was dead, until I left the building. I was not trembling, I was simply excited and worried. Well, Starnes was nervous. He looked as if he were worried. He seemed nervous both in talk and manner. I can say the same thing of the rest of the officers who were there. Mr. Frank was more nervous than the others. The men were all about as nervous on Monday and Tuesday. Everybody seemed to be in a turmoil and shaking. Mr. Holloway and Mr. Schiff were shaking. I noticed Mr. Schiff's hands shaking Monday morning. Mr. Holloway was about in the same shape. Mr. Frank

was very nervous Tuesday after the extra came out saying that they were going to arrest him. That was about 15 or 20 minutes before they arrested him. As to who gets up the data for Mr. Frank for the financial sheets, Mr. Loeb sometimes, and Mr. Gantt used to get up some, and Mr. Schiff gets it up sometimes. Mr. Frank got it up himself, sometimes. No, I do not know that Mr. Schiff furnished it to him all the time. I never noticed whether Lee was nervous or not at any time, but of course, he looked bothered and worried. Mr. Frank told me that the slip he took out of the clock Sunday morning had been punched regularly. I made the same mistake standing right there by his side. I didn't see Mr. Frank date the slip. It ought to have been dated the 26th. The slip I saw didn't have any time on it except the watchman's time. I don't know whether I would know it or not, to identify. The slips are not made in duplicate. As to whether there is any mark on the slip to enable anyone to identify it, as the one taken out that night, my memory is that it was started at 6:01 or 6:32. Of course nobody could tell who punched the clock, one man's punch is just like another. That diagram or picture (State's Exhibit A) is a fair representation of the building as a whole, ~~it is not a fair representation of the building as a whole~~, it is not a fair representation of the interior. I never knew there were any stairs in the basement until this matter came up. They are never used to my knowledge. The regular place of keeping these order blank books is in the outer office. There is no regular place in the basement to keep paper, but it is thrown out in the waste basket and gets down in the trash. There is no use for that paper anywhere but in the office, but that doesn't prevent it from

There is a way of closing the door in rear of second floor from upstairs

being scattered around. I have scratch paids of that shape scattered around even in the basement. That scratch pad is used all over the factory, everywhere there is a foreman or a forelady. No, not in the area around the elevator there. The trash is carried downstairs right in front of the boiler. Sometimes if they are in a hurry they leave it around the elevator for a little while, and when I go down I make the negro move it to the boiler. It is usually burned. Some of it may stay there for a week, some of it burned right away.

RECROSS EXAMINATION BY DEFENDANT.

Montag and Frank merely had some words when Frank became so nervous. Schiff was trembling Monday, Holloway also. As to people being nervous, I noticed Miss Flowers began to cry and scream and I had to go in there and get hold of her myself. That was Tuesday morning. The whole factory was wrought up. I couldn't hardly keep anybody at work. I had to let them go on Monday, and I wished I had let them go for the rest of the week, for I couldn't get any work out of them. I wouldn't say that I couldn't get any work out of Christopher Columbus Barrett, since, but he has lost a good deal of time. I would have to look to the pay roll to tell.

W. F. ANDERSON, Sworn for the State.

I was at police headquarters Saturday, April 26th. I got a call from the night watchman at the pencil factory. He said a woman was dead at the factory. I asked him if it was a white woman or a negro woman. He said it was a white woman. We went there in an automobile, shook the door and Newt Lee came down from the second floor and carried us back to the ladder that goes down through the scuttle hole. About 3;30 I called up Mr. Frank on the telephone and got no answer. I heard the telephone rattling and buzzing. I continued to call for about five minutes. I told Central that there had been a girl killed in the factory and I wanted to get Mr. Frank. I called Mr. Haas and Mr. Montag, too. I got a response from both. I think a

lady answered the telephone. I got them in a few minutes. I tried to getMr. Frank again about four o'clock. Central said she rang and she couldn't get him. There was some blood on the girl's underclothes.

CROSS EXAMINATION.

There was a wound on the left-hand side of the girl's head The blood was dried up. It was wet right next to the skin. Lee said over the telephone that it was a white girl. It took us about three minutes to get to the factory from the police station, just as quick as the automobile could get us there. We got there inside of five minutes after I received his telephone message. Lee had a smoky lantern. You couldn't see very far with it. It was smoked up right smart. Lee said he had been to the closet and had his lantern sitting down there and he looked over and saw the lady. He said he saw her while he was standing up. I said he couldn't see her. You could see the bulk of anything that far, but you couldn't tell that far whether it was a person. He told me when I first got him that he had his lantern sitting down right in front of him. The body was lying sort of catecornered and on the left side of the body I saw a number of tracks which lead from the body to the shaving room. There is an opening from the place where the body lay into the shaving room. I found a pendl down there. There are plenty of pencils and trash in the basement. The trash was all up next to the boiler.

H. L. PARRY, sworn in behalf of the State.

I reported the statement of Leo M. Frank before the coroner's jury. I have been a stenographer for thirty years and considered an expert.

CROSS EXAMINATION.

Newt Lee was asked the following questions and gave the

following answers at the coroner's jury: "Q. Had you ever seen him change that before? A. Well, he put the tape in once before. Q. When was that? A. I don't know, sir, when it was, it was one night. Q. How long did it take him the first time you ever saw him put the tape on? A. I never paid any attention to him. Q. Well, about how long did it take him, five minutes? A. No, sir, it didn't take him that long. Q. Did it take him a minute? A. I couldn't tell exactly how long. Q. How long did it take the other night, on Saturday night? A. Well, it took him a pretty good little bit, because he spoke about it. He said it's pretty hard, you know, to get on." I don't know whether he swore anything else on that particular subject without examining the record.

G. C. FEBRUARY, sworn for the State.

I was present at Chief Lanford's office when Leo M. Frank and L. Z. Rosser were there. I took down Mr. Frank's statement stenographically. I don't remember Frank's answers in detail, Mr. Rosser was looking out of the window most of the time. He didn't say anything while I was in there. This (Exhibit B, ~~Plaintiff~~ State) report is correct report of what Mr. Frank said. It was made on Monday, April 28th.

CROSS EXAMINATION.

I believe Mr. Rosser and Mr. Frank were in the room when I came in. It was sometime in the forenoon. I have never been a court stenographer except in Recorder's court. I am Chief Lanford's private secretary. Mr. Black was in there during the latter part of Mr. Frank's statement. Chief Lanford asked Mr. Frank if he changed clothes. He showed part of his short and opened his trousers. He showed his clothing to

Chief Lanford at the end of the statement. I wronte the statement out in longhand the same day. I don't remember exactly when.

ALBERT McKNIGHT, Sworn for the State.

My wife is Minola McKnight. She cooks for Mrs. Seling. Between 1 and 2 o'clock on Memorial Day I was at the home of Mr. Frank to see my wife. He came in close to 1:30. He did not eat any dinner He came in, went to the sideboard of the dining room, stayed there a few minutes and then he goes out and catches a car. Stayed there about 5 or ten minutes.

CROSS EXAMINATION.

Mrs. Seling and Mrs. Frank were present when Mr. Frank came in. I was in the cook room. Thereis a swinging door between the dining room and the cook room. The dining room door was open. The door swings back and forth, but they don't keep it shut. You can see from the kitchen into the dining room. You can look in the mirror in the corner and see all over the dining room. I looked in the mirror in the corner and saw him. You can look in that mirror and see in the sitting room and in the dining room. I have no idea how big the ditchen or dining room is. I was never in the dining room in my life. I was sitting at the back door in the kitchen, at the right side of the back door, up against the wall. Minola went into the dining room, and stayed a minuted or two, no more than two minutes. She came back into the kitchen. I don't know whether the other folks ate dinner or not, I did not see Mr. Seling. I came to the house from my house in the rear of 318 Pulliam Street. After coming to the sideboard Mr. Frank went into the sitting room where Mr. Seling was. I didn't see Mr. Seling, but heard him talking .

Birmingham, I told it to Mr. Craven of the Beck & Gregg Company. It was before Minola went down to the jail. Mr. Starnes, Mr. Campbell, Mr. Morse, Mr. Martin and Mr. Dorsey all talked to me. I didn't go down to see Minola at the station house. I didn't see Mrs. Frank or Mrs. Seling that Saturday through the mirror. I didn't keep my eye on the mirror all the time. I couldn't tell who was in the dining room without looking in the mirror. Mr. Frank got there not later than 1:30. Mr. Frank came on back to Pulliam Street and caught the Georgia Avenue car at the corner of Georgia Avenue, and Pulliam Street. I am certain that he caught the Georgia Avenue car at Pulliam Street and Georgia Avenue.

RE-DIRECT EXAMINATION.

The Seling residence is on East Georgia Avenue between Pullian and Washington Streets. I don't know exactly the nearest place for Mr. Frank to have gotten on the car, Washington Street or Pulliam Street. I suppose Pulliam Street is nearer to town than Washington. I certainly saw Mr. Frank that day, from the kitchen where I was sitting.

MISS HELEN FERGUSON, Sworn for the State.

My name is Helen Ferguson, I worked at the National Pencil Company on Friday the 25th. I saw Mr. Frank Friday, April 25, about 7 o'clock in the evening and asked for Mary Phagan's money. Mr. Frank said "I can't let you have it", and before he said anything else I turned around and walked out. I had gotten Mary's money before, but I didn't get it from Mr. Frank.

CROSS EXAMINATION.

When I got Mary's money before I went up there and called my number and called her number, and I got mine and hers. I didn't ask the man that was paying off this time to let me have it. I don't remember whether Mr. Schiff was in the office or not

when I asked Mr. Frank for Mary's money. Some of the office force were there, but I can't recall their name. I worked in the metal department about two years. I never saw little Mary Phagan in Mr. Frank's office. I don't think Mr. Frank knew my name, he knew my face. It has been some time since I asked for Mary's pay by number. I do not believe that I ever saw Mr. Frank speak to Mary Phagan.

RE-DIRECT EXAMINATION.

I don't know who paid off on Friday, April 25th.

R. L. WAGGONER, Sworn for the State.

I am a city ~~policeman~~ detective. On Tuesday, April 29th, from ten thirty until a little after 11 in the morning I was in front of the pencil factory on the other side of the street. I would continually see Mr. Frank walk to the window and look down and twist his hands when he would come to the window looking down on the sidewalk. He did ~~this about 12 times when I~~ was there in about 30 minutes. I was in the ~~automobile~~ with Mr. Frank and Mr. Black and his leg was shaking. He was under arrest at the time.

CROSS EXAMINATION.

I don't know what he was doing in the office. I saw some other people up there that I didn't recognize. I was sent to the pencil factory to notice Mr. Frank and the pencil factory. I thought Mr. Frank would be arrested.

J. L. BEAVERS, Sworn for the State.

I am Chief of police of the City of Atlanta. I was at the pencil factory on Tuesday, April 29th, and saw what I took to be a splotch of blood on the floor, seemed to be as big as a quarter in the center and scattered out in the direction of this room near the door. right near the little dressing room on office floor. There was one splotch and some others scattered around there.

CROSS EXAMINATION.

It may have been Monday that I was at the pencil factory.

I don't know whether itnwas blood or not. It looked like blood.

R. M. LASSITER, Sworn for the State.

I am a city policeman. On Sunday morning, April 27th, I found a parasol in the bottom of the elevator shaft. It was lying about the center of the shaft. I also found a ball of rope twine, small wrapping twine, and also something that looked like a person's stool.

CROSS EXAMINATION.

I noticed evidence of dragging from the elevator in the basement. As I passed the rear door at 12 o'clock, the door was closed. The umbrella was not crushed. I found it between 6 and 7 o'clock in the morning. The elevator comes down there and hits the ground plump at the bottom of the basement.

RE DIRECT EXAMINATION.

I don't know whether the elevator shaft has a cement bottom or not. There is a whole lot of trash at the bottom.

L. O. GRICE, Sworn for the State.

My name is L. O. Grice. I was at the National Pencil Company's place on Sunday morning, April 27th. A small sized man, defendant here, attracted my attention, on account of his nervousness.

CROSS EXAMINATION.

I was called as a witness in this case one week after it started. I told some of my fri ends about Mr. Frank's nervousness and they advised me to go to Dorsey. I never knew Mr. Frank before. When we were told of how the little child was murdered, it excited me some.

RE-DIRECT EXAMINATION

I don't recall trembling any. I am pretty sure I didn't because my friend that I went to Opelika with that morning suggested that I was trembling when I went through there, and I

told him I was not. He was not there when I went through the factory and when I told him about it,he said I bet you were scared. He walked around this way a little bit and he was kind of shaking like that (illustrating).His fingers were trembling.

MELL STANFORD, Sworn for the State (recalled).

The door in the rear part of the factory on the second floor on Friday evening was barred. There is no way in the rear of the building to come down to the second floor when the door is barred except the fire escape,and you have to be on office floor to undo the door. The area around the elevator shaft on the first floor near the hold and radiator was cleaned up after the murder. It was the early part of the week after the murder.

CROSS EXAMINATION.

I didn't clean it myself. I saw it cleaned. I passed by as it was being cleaned up.

W. H. GHEESLING, Sworn for the State.

I am a funeral director and embalmer. I moved the body of Mary Phagan at ten minutes to four o'clock April 27, in the morning. The cord (Exhibit G-State) was around the neck. The knot was on the right side of the neck and was lying kind of looped around the head. It wasn't very tight at the time I moved it. There was an impress of an eighth of an inch on the neck. The rag (Exhibit D- State) was around her hair and over her face. The tongue an inch and a quarter out of her mouth sticking out. The body was rigid, looking like it had been dead for some time. My opinion is that she had been dead ten or fifteen hours, or probably ~~longer.~~ The blood was very much congested. The blood had settled in her face because she was lying on her face. Blood begins to settle at death or a very few minutes after death. After Dr. Hurt examined her nails, I

 did. I found some dirt and dust under the nails. I discovered

some urine on her underclothes and there were some dry blood splotches there. The right leg of the drawers were split with a knife or torn right up the seam. Her right eye was very dark;looked like it was hit before death because it was very much swollen; if it had been hit after death there wouldn't have been any swelling. I found a wound 2-1/4 inches on the back of the head. It was made before death,because it bled a great deal. The hair was matted with blood and was very dry. If it had been made after death, there would have been no blood there. There is no circulation after death. The skull wasn't crushed; the scalp was broken. The indication was that it was made before death. There was a scar over each eye about the size of a dime. I didn't notice any scratches on her nose. I can't state whether the defendant ever looked at the body or not. There was some discharge on her underclothes which was very dry and if she had been dead a short time, it would have been wet yet.

CROSS EXAMINATION.

I judge the length of time the corpose had been dead by the rigor mortis. This is very indefinite at times. It begins before death. If she died of strangulation,I would expect rigor mortis to begin within an hour. I have never had any experience about a case of strangulation so as to determine when rigor mortis began and when it broke. There is no certainty about how long a corpose is dead. All the blood was dry when I examined the body. back Mr.Rogers and Mr.Black came with Mr.Frank and asked me to take him to where the girl was. I took them back there,pulled a light, pulled the sheet back,and moved the revolving table and walked out between them. Mr.Frank was near the right-hand going in. Mr.Black was at the left. I took a gallon of blood from the little girl's body, enough to clear up and the face and body. I injected one gallon of the formula into the corpse. Formaldehyde is a constituent part of the embalming fluid used. I prepared the little girl properly for burial. There was no mutilation at all on the body. I judge she died of strangulation because the rope was tight enough to choke her to death and her tongue being an inch and a quarter out of her mouth, showed she died from strangulation.

RE-DIRECT EXAMINATION.

72 I don't think the little girl lost much blood.

DR. CLAUDE SMITH, Sworn for the State.

I am physician and City Bacteriologist and Chemist. These chips (Exhibit E-State) appear to be the specimen which the detectives brought to my office and which I examined. They had considerable dirt on them and some coloring stain. On one of them I found some blood corpuscles. I do not know whether it was human blood. This shirt (Exhibit E for State) appears to be the same shirt brought to my office by detectives which I examined. I examined spots and it showed blood stain. I got no odor from the arm pits that it had been worn. The blood I noticed was smeared a little on the inside in places. It didn't extend out on the outside. The blood on shirt was somewhat on the inside of the garment high up about the waist line, which, to my mind, could not have been produced by turning up the tail.

CROSS EXAMINATION.

I found grit and stain on all of the chips. I couldn't tell the one that I found blood on. I did the work in the ordinary way. The whole surface of the chips was coated with dirt. I couldn't tell whether the blood stain was fresh or old. I have kept blood corpuscles in the laboratory for several years. I found probably three or four or five blood corpuscles in a field. I don't know how much blood was there. A drop or half drop would have caused it, or even less than that. Rigor mortis begins very soon after death. Sometimes starts quicker, but usually starts very soon. I could not say when riger mortis would end.

DR. J. W. HURT, Sworn for the State.

I am County Physician. I saw the body of Mary Phagan on Sunday morning, the 27th of April. She had a scalp wound on the left side of her head about 2-1/2 inches long, about 4 inches from the top of the left ear through the scalp to the skull. She had a black contused eye. A number of small minor

73 scratches on the face. The tongue was protruding about a half

an inch through the teeth. There was a wound on the left knee, about 2 inches below the knee. There were some superficial scratches on the left and right elbow. There was a cord around the neck and this cord was inbedded into the skin and in my opinion she died from strangulation. This cord (Exhibit "C" for State) looks like the cord that was around her neck. There was swelling on the neck. In my opinion the cord was put on before death. The wound on the back of the head seemed to have been made with a blunt edged instrument and the blow from down upward. The scalp wound was made before death. It was calculated to produce unconsciousness. The black eye appeared to have been made by some soft instrument in that the skin wasnot broken. I think the scratches on the face were made after death. I examined the hymen. It was not intact. There was blood on the drawers. I discovered no violence to the parts. There was blood on the parts. I didn't know whether it was fresh blood or menstrual blood. The vagina was a little larger than the normal size of a girl of that age. It is my opinion that this enlargement of the vagina could have been produced by penetration immediately preceding death. She had a normal virgin uterus. She was not pregnant. I made no examination of the blood vessels of the uterus or womb.

CROSS EXAMINATION.

The body looked as if it had been dragged through dirt and cinders. It is my impression that she was dragged face forward. If she had falled on the corner of the floor that was sharp edged, or the corner of an elevator shaft with an edge, it might have produced the wound. I do not know of the kind of instrument that produced the wound. There was no contusion on the inside of the skull, but the skull wasn't fractured. Neither the

brain nor the meningis were affected. There was a little contusion on the interlining of the skull. There was no bleeding on the brain tissues. I don't know whether it would produce unconsciousness or not. I was never asked before to examine the inside of anybody's skull to determine the fact whether death or unconsciousness resulted from the wound. It is my impression that this lick did produce unconsciousness, but I won't swear it, I don't know. The hemorrhage which we discovered in the skull caused no pressure on the brain. That was no sign that unconsciousness resulted. Where a person is strangled to death the lungs ought to show congestion. I never examined this girl's lungs. When I saw the body on April 27th I gave it as my opinion that she had been dead from 16 to 20 hours at 9 o'clock Sunday morning. Rigor mortis was complete. It is a very variable thing. I couldn't tell whether the blood on her underclothes was menstrual blood or not. The hymen wasnot intact, and I was not able to say when this hymen was reptured. I saw no indication of an injury to the hymen. The appearance of the blood on the parts was characteristic of a menstrual flow. There was no laceration on the vagina, and no mutilation on this girl's body except those wounds on the face, head and legs. The size of the vagina is no indication of anything except the anatomy and the natural build of the person. It is no indication of rape. I found no outward signs of rape. I have formed no opinion whether this little girl was raped or had ever had intercourse with anybody. There were no external marks of violence. I told Col. Rosser at the Coroner's inquest that this little girl had her monthly period on, but I got that from somebody else I did not conclude that from my examination. The monthly period causes some inflamation and congestion in the blood vessels of the ovaries and uterus. The vagina itself might have some different appearance. I was

present when Dr. Harris madethe post mortem examination of this girl. Cabbage is digested better by some people than others. It depends on the individual very much. It is considered hard to digest. It depends largely on mastication. You can chew up so thoroughly that it would go down into the stomach almost a liquid, but it would not be digested until the stomach took up that chewed mass. It would take a much longer time to digest and assimilate unmasticated cabbage than if it had been thoroughly chewed. It takes about 3 1/2 hours to digest cabbage properly masticated, and it would take longer if the cabbage had been taken into the stomach actually or practically shole. Digestion continues partially in unconsciousness. It is a guess to say whether the girs was conscious or not. I would not undertake to give an opinion how long she remained unconscious. I would not undertake to give an opinion and don't know of any way of telling ten days after death how long a distended condition of the vagina existed before death.

RE-DIRECT EXAMINATION.

I could not detect the nymen from a digital and occular examination. Ordinary normal menses would produce a dilation of the blood vessels in the womb. The blood, flowing over the hymen I think would produce a little inflamation at the hymen, but if the hymen was broken down, I don't know that menstruation would have any affect upon the hymen. Of the menstruation was about off, then I would say that any undue excitement might produce the flow again, or increase the flow that was already there. The contents of this bottle didn't (Exhibit "G"--State), stay in the stomach very long.

RE-CROSS EXAMINATION.

I wouldn't undertake to say how long that cabbage (Ex-

hibit "H"--State) had been in the child 's stomach. A blow on the back of the head might blacken one or both eyes.

RE-DIRECT EXAMINATION.

I think excitement could produce flow from the uterus. I don't think it would cause any discoloration of the walls of the vagina except from the blood.

DR. H. F. HARRIS, sworn for the State.

I am a practicing physician. I made an examination of the body of Mary Phagan on May 5th. On removing the skull I found there wasno actual break of the skull, but a little hemmorrhage under the skull, corresponding to the point where the blow had been delivered, which shows that the blow washard enough to have made the person unconscious. This wound on the head wasnot sufficient to have caused death. I think beyond any question she came to her death from strangulation from this cord being wound around her neck. The bruise around the eye was caused by a soft instrument, because it didn't show the degree of contusion that would have been produced by a hard instrument. The outside cuticle of the skin wasn't broken. The injury to the eye and scalp were caused before death. I examined the contents of the stomach, finding 160 cubic centimeters of cabbage and biscuit, or wheat and bread. It had progressed very slightly towards digestion. It is impossible for one to say absolutely how long this cabbage had been in the stomach, but I feel confident that she was either killed or received the blow on the back of the head within a half hour after she finished her meal. I made an examination of the privates of Mary Phagan. I found no spermatozoa. On the walls of the vagina there was evidences of violence of some kind. The epitheleum was pulled loose, completely detached in places, blood vessels were dilated in

mediately beneath the surface and a great deal ofhemorrhage in the surrounding tissues. The dilation of the blood vessels indicated to me that the injury had been made in the vagina some little time before death. Perhaps ten to fifteen minutes. It had occurred before death by reason of the fact that these blood vessels were dilated. Inflamation had set in and it takes an appreciable length of time for the process of inflmmatory change to begin. There was evidence of violence in the neighborhood of the hymen. Rigor mortis varies so much that it is not accurate to state how long after death it sets in. It may begin in a few minutes and may be delayed for hours. I could not state from the examination how long Mary Phagan was dying. It is my opinion that she lived from a half to three-quarters of an hour after she ate her meal. The evidence of violence in the ~~hymen~~ vagina had evidently been done just before death. The fact that the child was strangled to death was indicated by the livi dity, the blueness of the parts, the congestion of the tongue and mouth and the blueness of the hands and fingernails. The lungs had the peculiar appearance which is always produced after embalming when formaldehyde is used. I am of the opinion that the wound on the back of the head could not have been produced by this stick (Exhibit 48 of defendant). I made a microscopic examination of the vagina and uterus. Natural menses would cause an enlargement of the uterus, but not of the vagina. In my opinion the menses could not have caused any dilation of the blood vessels and discoloration of the walls. From my own experiments I find that the behavior of the stomach after taking a small meal of cabbage and bread is practically the same as taking some biscuit and water alone. I examined Mary Phagan's stomach. It was normal in size, normal in position, and normal in every particular. I made a microscopic examination of the

contents in Mary Phagan's case. It showed plaintly that ithad not begun to dissolve, or only to a very slight degree, and indicated that the process of digestion had not gone on to any extent at the time that this girl was rendered unconscious. I found that the starch she had eaten had undergone practically no alteration. The contents taken from the little girl's stomach wasexamined chemically and the result showed that there were only slight traces of the first action of the digestive juices on the starch. It was plainly evident that none of the material had gone into the small intestines. As soon as food is put in the stomach the beginning of the secretion of the hydrochloric acid is found. It is from the quantity of this acid that the stomach secretes that doctors judge the state and degree of digestion. In this case the acid had not been secreted in such an excess that any of it had become what we call free. In this case the amount of acid in this girl's stomach was combined and was 32 degrees. Ordinarily in a normal stomach at the end of an hour it runs from 50 to 70 or 80. I found none of the pancreatic juices in the stomach which are usually found, about an hour after digestion starts.

CROSS EXAMINATION.

I donUt remember when Mr. Dorsey first talked to me about making this autopsy. As long as the heart wasbeating you could have put a piece of rope around the neck of this little girl and produced the same results as I found. I took about five or six ounces altogether out of the stomach. It was all used up in making my experiments. I know of no experiments made as to the effect of gastric juices where the patient is dead. The juices of the body after death gradually evaporate. The chemical analy-

WRINKLE IN PAGE

sis of each cabbage varies, not only in the plant but from the way it is cooked. It is a very vague matter as to what influences may retard digestion. Every individual is almost a law unto himself. To a certain extent different vegetables affect different stomachs different ways, but the average normal stomach digests anything that is eaten within reason. Some authorities claim that exercise will retard digestion. I don't know that mental activity would have very much effect in retarding the digestion. It is the generally accepted opinion that food begins to pass out of the stomach through the pyloris in about a half an hour. A great many things pass out of the stomach that are not digested. The juices of the stomach make no change in them. The stomach does not emulsify a solid. I never knew a normal man who could digest a solid. The science of digestion is rather a modern thing. I did not call in any chemist in making this examination. I said it was impossible for anyone to say absolutely how long the cabbage had been in the stomach of Mary Phagan before she met her death not within a minute or five minutes, but I say it was somewhere between one half an hour and three quarters. I am certain of that. Of course, if digestion had been delayed this time element would change. The violence to the private parts might have been produced by the finger or by other means, but I found evidence of violence. It takes a rather considerable knock to tear epithelium off to the extent that bleeding would occur. I found the epithelium completely detached in places and in other places it was not detached. A digital examination means putting the finger in. The swelling and dilation of the blood vessels could be seen only with a microscope. It is impossible to say how much they were swollen. A scalp wound is very prone to bleed. I have some cabbage here from two normal persons. Here was same meal, taken of cabbage and wheaten bread by two men of normal stomachs and contents taken out within an hour. We found there was very little cabbage left.

C. B. DALTON, Sworn for the State.

80 I know Leo M. Frank, Daisy Hopkins and Jim Conley. I have

visited the National Pencil Compan y three, four or five times. I have been in the office of Leo M. Frank two or three times. I have been down in the basement. I don't know whether Mr. Frank knew I was in the basement or not, but he knew I was there. I saw Conley there and the night watchman, and he was not Conley. There would be some ladies in Mr. Frank's office, Sometimes there would be two, and sometimes one. May be they didn't work in the mornings and they would be there in the evenings

CROSS EXAMINATION.

I don't recollect the first time I was in Mr. Frank's office. It was last fall. I havebeen down there one time this year but Mr. Frank wasn't there. It was Saturday evening. I went in there with Miss Daisy Hopkins. I saw some parties in the office but I don't know them. They were ladies. Sometimes there would be two and sometimes more. I don't know whether it was the stenographer or not. I don't recollect the next time I saw him in his office. I never saw any gentlemen but Mr. Frank in there. Every time I was in Mr Frank's office was before Christmas. Miss Daisy Hopkins introducedme to him. I saw Conley there one time this year and several times on Saturday evenings. Mr. Frank wasn't there the last time. Conley was sitting there at the front door. When I went down the ladder Miss Daisy went with me. We went back by the trash pile in the basement. I saw an old cot and a stretcher. I have been in Atlanta for ten years. I have never been away over a week. I saw Mr. Frank about two o'clock in the afternoon. There was no curtains drawn in the office. It was very light in there. I went in the first office, near the stairway. The night watchman I spoke of was a negro. I saw him about the first of January. I saw a negro night watchman there between September and December.

I lived in Walton County fortwenty years. I came right here from Walton County. I was absent from Walton County once for two or three years and lived in Lawrenceville. I have walked hime from the factory with Miss Laura Atkins and Miss Smith.

RE-DIRECT EXAMINATION.

I gave Jim Conley a half dozen or more quarters. I saw Mr. Frank in his office im the day time. Mr. Frank had Coca-Cola lemon and lime and beer in the office. I never saw the ladies in his office doing any writing.

RECALLED FOR CROSS EXAMINATION.

Andrew Dalton is my brother-in-law. John Dalton is a first cousin. I am the Dalton that went to the chain gang for stealing in Walton County in 1894. We all pleaded guilty. The others paid out. I don't know how long I served. I stole a shop hammer. That wasin case No. L. There were three cases and the sentences were concurrent. One of the other Daltons stole a plow and I don't know what the other one stole. I was with them. In 1899 at the February term of Walton Superior Court I was indicted for helping steal bale of cotton. In Gwinnett County I was prosecuted for stealing corn, but I came clear.

RE-DIRECT EXAMINATION.

It has been ~~18 or 20~~ years since I have been in trouble. I was drunk with the two Dalton boys when we got into that hammer and plow stock scrape.

CROSS EXAMINATION.

I don't know whether I was indicted in 1906 in Walton County for selling liquor. I know D an Hillman and I know Bob Harris. I don't know whether I was indicted for selling liquor to them or not.

RE-DIRECT EXAMINATION.

[illegible] ing to him and she told me about it.

S. L. ROSSER, Sworn for the State.

I am a city policeman. On Monday, April 28th, I went out to see Mrs. White. On May 6th or 7th was the first time I knew Mrs. White claimed to have seen a negro at the factory on April 26th. These are the same chips we had at factory. The club was not on floor by elevator the day I searched the place. I had a flashlight and searched for everything. I would have seen it had it beem there.

CROSS EXAMINATION.

I made no inquiry of her about this before. She volunteered the information when I came out the second time.

JAMES CONLEY, Sworn for the State.

I had a little conversation with Mr. Frank on Friday, the 25th of April. He wanted me to come to the pencil factory that Friday morning, that he had some work on the third floor he wanted me to do. All right I will talk louder. Friday evening about three o'clock Mr. Frank came to the fourth floor where I was working and said he wanted me to come to the pencil factory on Saturday morning at 8:30; that he had some work for me to do on the second floor. I have been working for the pencil company a little over two years. Yes, I had gone back there that way for Mr. Frank before, when he asked me to come back. I got to the pencil factory about 8:30 on April 26th. Mr. Frank and me got to the door at the same time. Mr. Frank walked on the inside and I walked behind him and he says to me, "Good morning," and I says, "Good morning, Mr. Frank." He says, "You are a little early this morning," and I says, "No sir, I am not early." He says, "Well, you are a little early to do what I wanted you to do for me, and I want you to watch for me like you have been doing the rest of the Saturdays." I always stayed on the first floor like I stayed the 26th of April and watched for Mr. Frank, while he and a young lady would be upon the second floor
83 chatting, I don't know what they were doing. He only told me

they wanted to chat. When young ladies would come there, I would sit down at the first floor and watch the door for him. I couldn't exactly tell how many times I have watched the floor for him previous to April 26th, it has been several times that I watched for him. I don't know who would be there when I watched for him, but there would be another young man, another young lady during the time I was at the door. A lady for him and one for Mr. Frank. Mr. Frank was alone there once, that was Thanksgiving day. I watched for him. Yes, a woman came there Thanksgiving Day, she was a tall, heavy built lady. I stayed down there and watched the door just as he told me the last time, April 26th. He told me when the lady came he would stomp and let me know that was the one and for me to lock the door. Well, after the lady came andhe stomped for me I went and locked the door as he said. He told me when he got through with the lady he would whistle and for me then to go and unlock the door. That was last Thanksgiving day, 1912. On April 26th, me and Mr. Frank met at the door. He says, "What I want you to do is to watch for me today as you did other Saturdays," and I says, "All right," I said, "Mr. Frank, I want to go to the Capital City Laundry to see my mother," and he said, "By the time you go to the laundry and come back to Trinity Avenue stop at the corner of Nelson and Forsyth Street until I go to Montags." I don't know exactly what time I got to the corner of Nelson and Forsyth Streets but I came there sometime between 10 and 10:30. I saw Mr. Frank as he passed by me, I was standing on the corner, he was coming up Forsyth Street toward Nelson Street. He was going to Montags' factory. While I was there on the corner he said, "Ha, ha, you are here, is yer." And I says, "Yes, sir, I am right here, Mr. Frank." He says, "Well, wait until I go to Mr. Sig's. I won't be very long. I'll be right back." I says,

"All right, Mr. Frank, I'll be right here." I don't know how long he stayed at Montag's. He didn't say anything when he came back from Montag's, but told me to come on. Mr. Frank came out Nelson Street and down Forsyth Street towards the pencil factory and I followed right behind. As we passed up there the grocery store, Albertson Brothers, a young man was up there with a paper sack getting some stuff out of a box on the sidewalk, and he had his little baby standing by the side of him, and just as Mr. Frank passed by him, I was a little behind Mr. Frank, and Mr. Frank said something to me and by him looking back at me and saying something to me, he hit up against the man's baby, and the man turned around and looked to see who it was, and he looked directly in my face, but I never did catch the idea what Mr. Frank said. Mr. Frank stopped at Curtis' Drug Store, corner Mitchell and Forsyth Street , want in to the soda fountain. He came out and went straight on to the factory, me right behind him, when we got to the factory, we both went on the inside, and Mr. Frank stopped me at the door, and when he stopped me at the door, he put his hand on the door and turned the door and says: "You see, you turn the knob just like this and there can't nobody come in drom the outside," and I says, "All right", and I walked back to a little box back there by the trash barrel. He told me to push back the box up against the trash barrel and sit on it, and he says, "Now there will be a younglady up here after awhile, and me and her are going to chat a little," and he says, "Now, when the lady comes, I will stomp like I did before," andhe says, "That will be the lady, and you go and shut the door," and I says, "All right, sir." And he says, "Now, when I whistle I will be through, so you can go and unlock the door and you come upstairs to my office then like you were going to borrow some money for me and that will give the young lady

time to get out." I says, "All rig ht, I will do just as you say," and I did as he said. Mr. Frank hit me a little blow on my chest and says, "Now, whatever you do, don't let Mr. Darley see you." I says, "All right, I won't let him see me." Then Mr. Frank went upstairs and he said, "Remember to keep your eyes open," and I says, "All right, I will Mr. Frank." And I sat there on the box and that was the last I seen of Mr. Frank until up in the day sometime. The first person I saw that morning after I got in there was Mr. Darley, he went upstairs. The next person was Miss Mattie Smith, she went on upstairs, then I saw her come down from upstairs. Miss Mattie walked to the door and stopped, and Mr. Darley comes on down to the door where Miss Mattie was, and he says, "Don't you worry, I will see that you get that next Saturday. And Miss Mattie came on out and went up Alabama Street and Mr. Darley went back upstairs. Seemed like Miss Mattie was crying, she was wiping her eyes when she was standing down there. This was before I went to Nelson and Forsyth Street. After we got back from Montag Brothers, the first person I saw come along was a lady that worked on the fourth floor, I don't know her name. She went on up the steps. The next person that came along was the negro drayman, he went on upstairs. He was a peg-legged fellow, real dark. The next I saw this negro and Mr. Holloway coming back down the steps. Mr. Holloway was putting on his glasses and had a bill in his hands, and he went out towards the wagon on the sidewalk, then Mr. Holloway came back up the steps, then after Mr. Darley came down and left, Mr. Holloway came down and left. Then this lady that worked on the fourth floor came down and left. The next person I saw coming there was Mr. Quinn. He went upstairs, stayed a little while and then came down. The next person that I saw

was Miss Mary Perkins, that's what I callher, this lady that is dead, I don't know her name. After she went upstairs I heard ~~went up the~~ feet steps going towards the office and after she went in the office, I heard two people walking out of the office and going like they were coming down the steps, but they didn't come down the steps, they went back towards the metal department. After they went back there, I heard the lady scream, then I didn't hear ~~no more,~~ and the next person I saw coming in there was Miss Monteen Stover. She had on a pair of tennis shoes and a rain coat. She stayed there a pretty ~~good while~~, it wasn't so very long either. She came back down the steps and left.. After she came back down the steps and left, I heard somebody from the metal department come running back there upstairs, on their tiptoes, then I heard somebody tiptoeing back towards the metal department. After that I kind of dozed off and went to sleep. Next thing I knew Mr. Frank was up over my head stamping and then I went and locked the door, and sat on the box a little while, and the next thing I heard was Mr. Frank whistling. I ~~don't know how many minutes it was after that I heard him whistle.~~ When I heard him whistling I went and unlocked the door just like he said, and went on up the steps. Mr. Frank was standing up there at the top of the steps and shivering and trembling and ~~rubbing his hands like this.~~ He had a little rope in his hands ~~and~~ a long wide piece of cord. His eyes were large and they looked right funny. He looked funny out of his eyes. His face was red. Yes, he had a cord in his hands just like this here cord. After I got up to the top of the steps, he ~~asked me~~, "Did you see that little girl who passed here just a while ago?" and I told him I saw one come along there and she come back again, and

~~and she hadn't come back~~

down, and he says, "Well, that one you say didn't come back down, she come into my office awhile ago and wanted to know something about her work in my office and I went back there to see if the little girl's work had come, and I wanted to be with the little girl, and she refused me, and I guess I struck her and I struck her too hard and she fell and hit her head against something, and I don't know how bad she got hurt. Of course you know I aint built like other men. The reason he said that was, I had seen him in a position I haven't seen any other man that has got children. I have seen him in the office two or three times before Thanksgiving and a lady was in his office, and she was sitting down in a chair, and she had her clothes up to here, and he was down on his knees, and she had her hands on Mr. Frank. I have seen him another time there in the packing room with a young lady lying on the table, she was on the edge of the table when I saw her. He asked me if I wouldn't go back there and bring her up so that he could put her somewhere, and he said to hurry that there would be money in it for me. When I came back there, I found the lady lying back flat of her back with a rope around her neck. The cloth was also tied around her neck and part of it was under her head like to catch blood. I noticed the clock after I went back there and found the lady was d ead and came back and told him. The clock was 4 minutes to one. She was dead when I went back there, and I came back and he said "Uh, uh", and told Mr. Frank the girl was dead. He told me to go back there by the cotton box, get a piece of cloth, put it around her and bring her up. I didn't hear what Mr. Frank said and I came on up there to hear what he said. He was standing on the top of the steps, like he was going down the steps, and while I was back in the metal department I didn't understand what he said, and I came on back there to understand what he did say,

and he said to go and get a piece of cloth to put around her, and I went and looked around the cotton box and got a piece of cloth and went back there. The girl was lying flat of her back and her hands were out this way. I put both of her hands down, they went down easily, and rolled her up in the cloth and taken the cloth and tied her up, and started to pick her up, and I looked back a little distance and saw her hat and piece of ribbon laying down and her slippers and I taken them and put them all in the cloth and I ran my right arm through the cloth and tried to bring it up on my shoulder. The cloth was tied just like a person that was going to give out clothes on Monday, they get the clothes and put them on the inside of a sheet and take each corner and tie the four corners together, and I run my right arm through the cloth after I tied it that way and went to put it on my shoulder, and I found I couldn't get it on my shoulder, it was heavy and I carried it on my arm the best I could, and when I got away from the little dressing room that was in the metal department, I let her fall, and I was scarred and I kind of jumped, and I said, "Mr. Frank, you will have to help me with this girl, she is heavy," and he come and caught her by the feet and I laid hold of her by the shoulders, and when we got her that way I was backing and Mr. Frank had her by the feet, and Mr. Frank kind of put her on me, he wasnervous and trembling, and after we got up a piece from where we got her at, he left her feet drop and then he picked her up and we went on the elevator, and he pulled down on one of the cords and the elevator wouldn't go, and he said "Wait, let me go in the office and get the key," and he went in the office and got the key and come back and unlocked the switch box and the elevator went down to the basement, and we carried her out and I opened the cloth and rolled her out there on the floor, and Mr. Frank

turned around and went on up the ladder, and I noticed her hat and slipper and piece of ribbon and I said, "Mr. Frank, what am I going to do with these things?" and he said, "Just leave them right there," and I taken the things and pitches them over in front of the boiler, and after Mr. Frank had left I goes on over to the elevator and he said, "Come on up and I will catch you on the first floor," and I got on the elevator and started it on to the first floor, and Mr. Frank was running up there. He didn't give me time to stop the elevator, he was so nervous and trembly, and before the elevator got to the top of the first floor Mr. Frank made the first step on to the elevator and by the elevator being a little down like that, he stepped down on it and hit me quite a blow right over about my chest and that jammed me up against the elevator and when we got near the second floor he tried to step off before it got to the floor and his foot caught on the second floor as he was stepping off and that made him stumble and he fell back sort of against me, and he goes on and takes the keys back to his office and leaves the box unlocked. I followed him into his private office and I sat down and he commenced to rubbing his hands and began to rub back his hair and after a while he got up and said, "Jim", and I didn't say nothing, and all at once he happened to look out of the door and there was somebody coming, and he said, "My God," here is Emma Clarke and Corinthia Hall," and he said "Come over here, Jim, I have got to put you in this wardrobe," and he put me in this wardrobe, and I stayed there a good while and they come in there and I heard them go out, and Mr. Frank come there and said, "You are in a tight place," and I said, "Yes," and he said, "You done very well." So after they went out and he had stepped in the hall and had come back he let me out of the wardrobe, and he said "You sit down", and I went and sat down, and Mr. Frank sat down. But the chair he had was too little for him, or too big for him or it wasn't far enough back or something. He reached

on the table to get a box of cigarettes and a box of matches, and he takes a cigarette and a match and hands me the box of cigarettes and I lit one and went to smoking and I handed him back the box of cigarettes, and he put it back in his pocket and then he took them out again and said, "You can have these", and I put them in my pocket, and then he said ,"Can you write," stopped and I said, "Yes, sir, a little bit," and he taken his pencil to fix up some notes. I was willing to do anything to help Mr. Frank because he was a white man and my superintendent, and he sat down and I sat down at the table and Mr. Frank dictated the notes to me. Whatever it was it didn't seem to suit him, and he told me to turn over and write again, and I turned the paper and wrote again, and when I done that he told me to turn over again and I turned ove r again and I wrote on the next page there, and he looked at that and kind of liked it and he said that was all right. Then He reached over and got another piece of paper, a green piece, and told me what to write. He took it and laid it on his desk and looked at me smiling and rubbing his hands, and then he pulled out a nice little roll of greenbacks, and he said, "Here is $200," and I taken the money and looked at it a little bit and I said, "Mr. Frank, don't you pay another dollar for that watchman, because I will pay him myself." and he said, "All right, I don't see what you want to buy a watch for either, that big fat wife of mine wanted me to buy an automobile and I wouldn't do it." And after awhile Mr. Frank looked at me and said, "You go down there in the basement and you take a lot oftrash and burn that package that's in front of the furnace," and I told him all right. But I was afraid to go down there by myself, and Mr. Frank wouldn't go down there with me. He said, "There's no need of my going down there," and I said, "Mr. Frank, you are a white man and you done it, and I am not going down there

and burn that myself." He looked at me then kind of frightened and he said "Let me see that money" and he took the money back and put i t back in his pocket, and I said "Is this the way you do things?" and he said, "You keep your mouth shut, that is all right." And Mr. Frank turned around in his chair and looked at the money and he looked back at me and folded his hands and looked up and said "Why should I hang, I have wealthy people in Brooklyn," and he looked down when he said that and I looked up at him, and he was looking up at the ceiling, and I said, "Mr. Frank what about me?" and he said, "That's all right, don't you worry about this thing, you just come back to work Monday like you don't know anything, and keep your mouth shut, if you get caught I will get you out on bond and send you away," and he said, "Can you come back this evening and do it?" and I said "Yes, that I was coming to get my money." He said, "Well, I am going home to get dinner and you come back here in about forty minutes and I will fix the money." and I said, "How will I get in?" and he said, "There willbe a place for you to get in all right, but if you are not coming back let me know, and I will take those things and put them down with the „body", and I said, "All right, I will be back in about forty minutes." Then I went down over to the beer saloon across the street and I took the cigarettes out of the box and there was some money in there and I took that out and there was two paper dollar bills in there and two silver quarters and I took a drink, and then I bought me a double header and drank it and I looked around at another colored fellow standing there and I asked him did he want a glass of beer andhe said "No," and I looked at the clock and it said twenty minutes to two and the man in there asked me was I going home, and I said, "Yes," and I walked south on Forsyth Street to Mitchell and Mitchell to Davis, and I said to

the fellow that was with me, "I am going back to Peters Street," and a Jew across the street that I owed a dime to called me and asked me about it, and I paid him that dime. Then I went on over to Peters Street and stayed there awhile. Then I went home and Itaken fifteen cents out of my pocket and gave a little girl a nickle to go and get some sausage and then I gave her a dime to go and get some wood, and she stayed so long that when she come back I said, "I will cook this sausage and eat it and go back to Mr. Frank's", and i laid down across the bed and went to sleep, and I didn't get up no more until half past six o'clock that night, that's the last I saw of Mr. Frank that Saturday. I saw him next time on Tuesday, on the fourth floor when I was sweeping. He walked up and he said,"How remember,keep your mouth shut",and I said,"all right," and he said,"If you'd come back on Saturday and done what I told you to do with it down there, there wouldn't have been no trouble." This conversation took place between ten and eleven o'clock Tuesday. Mr.Frank knew I could write a little bit,because he always gave me tablets up there at the office so I could write down what kind of boxes we had and I would give that to Mr.Frank down at his office and that's the way he knew I could write,I was arrested on Thursday,May 1st,Mr.Frank told me just what to write on those notes there. That is the same pad he told me to write on.(State's exhibit A). The girl's body was lying somewhere along there about #9 on that picture (State's Exhibit A).I dropped her somewhere along #7. We got on elevator on the second floor. The box that Mr.Frank unlocked was right around here on side of elevator. He told me to come back in about forty minutes to do that burning. Mr. Frank went in the office and got the key to unlock the elevator. The notes were fixed up in Mr. Frank's private office. I never did know what became of the notes. I left home that morning about seven or 7:30. I noticed the clock when I went from the factory to go to Nelson and Forsyth Streets, the clock was in a beer saloon on the corner of Mitchell Street. It said 9 minutes after 10. I don't know the name of the woman who was with [illegible] nk or

giving day. I know the man's name was Mr. Dalton. When I saw Mr. Frank coming towards the factory Saturday morning he had on his raincoat and his usual suit of clothes and an umbrella. Up to Christmas I used to run the elevator, then they put me on the fourth floor to clean up. I cleaned up twice a week on the first floor under Mr. Holloway's directions. The lady I saw in Mr. Frank's office Thanksgiving Day was a tall built lady, heavy weight, she was nice looking, she had on a blue looking dress with white dots on it and a graying looking coat with kind of tails to it. The coat was open like that and she had on white slippers and stockings. On Thanksgiving Day Mr. Frank told me to come to his office. I have never seen any cot or bed down in the basement. I refused to write for the police the first time. I told them I couldn't write.

CROSS EXAMINATION.

I am 27 years old. The last job I had was working for Dr. Palmer. I worked for him a year and a half. I worked before that for Orr Stationery Company for three or four months. Before that I worked for S. S. Gordon. Before that I worked for Adams Woodward and Dr. Honeywell. Got my first job eleven years ago with Mr. S. M. Truitt. Next job was with W. S. Coates. I can't spell his name. I can't read and write good. I can't read the newspapers good. No, sir; I don't read the newspaper. I never do, I have tried , but I found I couldn't and I quit. I can't read a paper right through. I can't go right straight down through the page, and that's the reason I don't read newspapers, I can't get any sense out of them. There is some little letters like "dis" and "Dat" that I can read. The other things I don't understand. No, I can't spell "Dis" and "dat". Yes, I can spell "school," I can't spell "collar", I can spell "shirts". I can spell "shoes", and "hat". I spell "cat" with

I don't know about spelling "mother." I can spell "papa". I spell it p-a-p-a. I can't spell "father" or "jury" or "judge" or "stockings." I never did go to school further than the first grade. I went to school about a year. I can spell "day", but not "daylight", I can speall "beer" but not "whiskey." I couldn't read the name "whiskey." No, I can't read any letter on that picture there (Exhibit A--State). I can't figure except with my fingers. I know the figures as far as eight, as far as twelve. I knows more about counting than I do about figuring. I don't know what year it was I went to school. I worked for Truitt about two years, for Mr. Coates five years, for Mr. Woodward and Mr. Honeywell about a year and a pressing club about two years, Orr Stationery Company three or four months, Dr. Palmer about a year and a half, and then I went to work for the pencil company. Mr. Herbert Schiff employed me at the pencil factory. Sometimes Mr. Schiff paid me off, sometimes Mr. Gantt, sometimes Mr. Frank. I don't remember when I saw Mr. Frank pay me off or how many times. I drawed my money very seldom. I would always have somebody else draw it for me. I told Mr. Holloway to let Gordon Bailey draw my money mostly. He's the one they call "Snowball." The reason why I didn't xraw it myself I would be owing some of the boys around the factory and I didn't have it to pay, and I would leave the factory about half past eleven so that I didn't have to pay it, and then I would have Snowball draw my money for me mostly, I would see him afterwards and he would give me the money. Sometimes I would go down through the basement out the back way to keep away from them. The reason I let them draw my money I owed some of them, and some of them owed me and I wanted them to pay me first before I paid them. I didn't want to get my money on the inside

because I didn't want them to be such a little [illegible] drawing

what they were drawing. I wasn't drawing but $6.05. Snowball was drawing $6.05. As to who it was I didn't want to see what I was drawing, there was one named Walter Pride; he's been there five years. He said he drew $12.00 a week. Then there was Joe Pride, He told me he drew $8.40 a week. They were down in the basement and asked me how much I was drawing. I told them it wasn't none of their business. Then there was a fellow named Fred. I don't know how much he drew. The next one was the fireman. I don't know how much he drew. There were two or three others, but I didn't have no talk with them. I was just hiding what I drew from Walter Pride. As to whether I couldn't draw my money after Walter drew his without his knowing it, well he would always be down there waiting for me. As to whether I couldn't get my money without his being behind me and seeing what I got, he could see if I tore open the envelope. I had to open it to pay them with. That's the reason I didn't go and draw my money. I know I could have put it in my pocket, but I couldn't tear it open unless I took it out. Yes, the reason I didn't draw my money was because I didn't want to pay them, That's the reason I let Snowball draw m y money. They could have slipped up behind me and looked. As to whether I couldn't walk off and keep them from seeing it, if I didn't tear it open, then they would keep up with me until I did. He would follow me around. No, I wasn't trying to keep out of paying them. As to what I was trying to do, if they paid me then I would pay them. The way I liked to settle with them, I liked to take them to the beer saloon and buy twice as much as they get. If I was there when they come in on me, I would say, "I owe you, let's drink it up." Yes, I would get out of it if I could, but if

sometimes that way and sometimes the other way. I would say, "I owe you fifteen cents, I buy three beers, and you owe me fifteen cents, and that be three beers." I say if I would bein the beer saloon when they come in there, I would do that, but if I could get out before they saw me, I would be gone. I never did know what time the watchman come there on Saturday, or any Saturday. I never have seen the nightwatchman in the factory. I have seen young Mr. Kendrick come and get his money. He always comes somewhere about two o'clock to get his money. I have seen him lots of times Saturday and get his money. He always got it from Mr. Frank at two o'clock. No, I didn't know Newt Lee. I heard them say there was a negro night watchman, but I never did know that he was a negro. I knew they paid employees off at twelve o'clock. I don't know what time the night watchman would come there to work. Mr. Holloway stays until 2:30. I couldn't tell the first time I ever watched for Mr. Frank. Sometimes during the last summer, somewhere just about in July. As to what he said to get me to watch for him that was on a Saturday, I would be there sweeping and Mr. Frank come out and called me in his office. I always worked until half past four in the evening. I would leave about half past twelve, ring out and come back about half past one or two. Sometimes I would ring in when I came back and sometimes I wouldn't. I ringed in every morning when I came. I never did ring in much. I would do it after they got after me about it. It was my habit not to do it. As to how they would know how much to pay me if I didn't ring in, I knew they paid me $1.10 a day, all the time. No, they didn't pay me by the clock punches, they paid me by the day, they paid me 11¢ an hour. Sometimes I would punch the clock when I got there; that was my duty. Sometimes I was paid when I didn't work. I don't know how that happened, but Mr.

Frank would come and tell me I didn't take out that money for the time you lost this week. I don't know on what date he ever did that on. Yes, I always got my money in envelopes. As to how they would know how much to put in the envelope, when I didn't punch, they would come and ask if I was here every time I didn't ring in, and they would ask Mr. Holloway if I was here. If the clock didn't show any punch, they would ask me if I was here at that hour. No, they wouldn't ask how many hours I was here, they would just ask if I was here a certain hour and then they would pay me for the full day, whether I punched the clock or not, just so I punched it in the morning. The lady that was with Mr. Frank the time I watched for him sometime last July was Miss Daisy Hopkins. It would always be somewhere between 3 and 3;30. I was sweeping on the second floor. Mr. Frank called me in his office. There was a lady in there with him. That was Miss Daisy Hopkins. She was present when he talked to me. He said, "You go down there and see nobody don't come up and you will have a chance to make some money. The other lady had gone out to get that young man, Mr. Dalton. I don't know how long she had been gone. She came back after a while with Mr. Dalton. They came upstairs to Mr.Frank's office, stayed there ten or fifteen minutes. They came back down, they didn't go out, and she says, "All right James". About an hour after that Mr.Frank came down. This lady and man after she said, "All right James" went down through the trap door into the basement. There's a place on the first floor that leads into another department and there's a trap door in there, and a stairway that leads down in the basement, and they pull out that trap door and go down in the basement. I opened the trap door for them. The reason I opened the trap door was because she said she was ready. I knew where she was going because Mr. Frank told me to watch, he told me where they were going. I don't know how long they stayed down there. I don't know when they came back. I watched the door all the time. Mr. Dalton gave me a quarter and went out laughing and the lady went up the steps. Then the ladies came down and left, and then Mr. Frank came

oo was

about half past four. He gave me a quarter and I left and then he left. The next Saturday I watched was ~~night~~ right near the same thing. It was about the last of July or the first of August. The next Saturday I watched for him about twelve o'clock he said "You know what you done for me last Saturday, I want to put you wise for this Saturday." I said, "All right, what time?"" He said, "Oh, about half past." After Mr. Holloway left, Mi ss Daisy Hopkins came on in into the office, Mr. Frank came out of the office, popped his fingers, bowed his head and went back into the office. I was standing there by the clock. Yes, he popped his fingers and bowed to me, and then I went down and stood by the door. He stayed there that time about half an hour and then the girl went out. He gave me a half a dollar this time. The next time I watched for him and Mr. Dalton too, somewhere along in the winter time, before Thanksgiving ~~Day~~, somewhere about the last part ofAugust. Yes, that's somewhere near the winter. This time he spoke to me on the fourth floor in the morning. Gordon Bailey was standing there when he spoke to me. He said, "I want ~~xxx~~ to put you wise again for today." The lady that came in that day was one who worked on the fourth floor; it was not Miss Daisy Hopkins. A nice-looking lady, kind of slim. She had hair like Mr. Hooper's. She had a green suit of clothes on. When Miss Daisy Hopkins came she had on a black skirt and white waist the first time. I don't know the name of that lady that works on the fourth floor. Yes, I have seen her lots of times at the factory, but I don't know her name. She went right to Mr. Frank's office, then I went and watched. She stayed about half an hour and came out. Mr. Frank went out of the factory and then came back. I stayed there and waited for him. He said, "I didn't take out that money."" I said, "Yes, I seed you didn't." He said. "That's all right old boy. I don't want you to say any-

thing to Mr. Herbert or Mr. Darley about what's going on around here."" Next time I watched for him was Thanksgiving Day. I met Mr. Frank that morning about eight o'clock. He said "A lady will be in here in a little while, me and her are going to chat, I don't want you to do no work, I just want you to watch." In about half an hour the lady came. I didn't know that lady, she didn't work at the factory. I think I saw her in the factory two or three nights before Thanksgiving Day in Mr. Frank's office. She was a nice looking lady. I think she had on black clothes. She was a very tall, heavy built lady. After she came in that Thanksgiving Day morning, I closed the door after Me stamped for me to close it. She went upstairs towards Mr. Frank's office. Mr. Frank came out there and stamped, andI closed the door. Mr. Frank said, "I'll stamp after this lady comes and you go and close the door and turn the night latch." That's the first time he told me about the night lock. And he says, "If everything is all right you kick against the door," and I kicked against the door. After an hour and a half Mr. Frank came down andunlocked the doors and says, "Everything is all right." He then went and looked up the street and told the lady to come on downstairs. After she came down, she said to Mr. Frank, "Is that the nigger?"and Mr. Frank said, "Yes, and she said, "Well, does he talk much?" and he says, "No, he is the best niggar I have ever seen." Mr. Frank called me in the office and gave me $1.25. The lady had on a blue skirt with white dots in it and white slippers and white stockings and had a gray tailor-made coat, with pieces of velvet on the edges of it. The velvet was black and the cloth of the coat was gray. She had on a black hat with big black feathers. I left a little before 12 o'clock. I didn't see anybody else there that day at the office. The next time I watched was way after Christmas, on a Saturday,

about the middle of January--somewhere about the first or middle. It was right after New Year, one or two, or three or four days after. It was on a Saturday. He said a young man and two ladies would be coming. That was that Saturday morning at half past seven. I was standing by the side of Gordon Bailey when he come and told me, and he said, I could make a piece of money off that man. Yes, Snowball couldhear what he said. The man and ladies came about half past two or three o'clock. They stayed there about two hours. I didn't know either one of the ladies. I can't describe what either one of them had on. The man was tall, slim built, a heavy man. I have seen him at the factory talking to Holloway, he didn't work there. I have seen him often talking to Holloway, through the week. You asked me what I did the second Saturday after I watched for him, well, I don't remember. As to what I did the Saturday I watched for him the second time, I disremember what I did. The Saturday after that, I think about the first of August, I did some more watching for him. I don't remember what I did the Saturday before Thanksgiving day. I don't remember what I did the Saturday after Thanksgiving day. I don't remember what I did the next Saturday. I don't know, sir, what I did the next Saturday. The next Saturday I did some watching for him. I watched for him somewhere about the last of September after Thanksgiving day. No, I don't remember any of those dates. Couldn't tell you to save my life what time I left home the first time I watched for him. I couldn't tell you what time I got to the factory the second time I watched for him, nor what time I left home. I don't know whether I drew my money on the first Saturday I watched for him. I disremember whether anybody else drew my money for me the second Saturday I watched for him. I don't know how much I drew. I couldn't tell you wehther I.

drew my money Thanksgiving Day or not. I don't know how much I drew. I don't remember what time I got down or what time I left. I don't know when I got to the factory the day before Thanksgiving, or how long I worked there. I don't remember how many hours I worked the first Saturday I watched for him or the second, or the third, or Thanksgiving Day. No, I don't know how much I drew on those days. The first time I was in prison was in September. The next time was sometime before Christmas, I can't remember the date. I was there thirty days. It was somewhere along in October. A year before that I was in prison too, about thirty days. I have been in prison three times since I have been with the pencil company. I have been in prison about three times within the last three or four years. I have been in prison seven or eight times within the last four or five years. I can't give you any of the dates, nor how long I stayed there any of the times that I was there. I don't know what month or what day it was, nor how long I stayed there. I knew the factory was not going to be run on April 26th. Yes, Snowball and I drink beer together sometimes in the building. Yes, we used to go down in the basement and drink together, but he aint the only man. I never was drunk at the factory. Snowball wasn't there the first Saturday I watched for Mr. Frank. I think he laid off. I don't know whether he was there the second or third Saturdays, I didn't see him Thanksgiving morning, but I saw him the day before Thanksgiving. That was the time that Mr. Frank told me to watch for him. He talked to me before Snowball. I don't know whether Snowball was there in January when I watched. Snowball was there in January in the box room when Mr. Frank told me to watch for him. I don't know

Mr. Frank knew he was there or not. There were eight

niggars in all working in the factory. Snowball, the fireman and me did just plain manual labor, the rest of the negroes had better jobs. Snowball, the fireman and I were the last negroes to get jobs there. We were the new darkies; the others had been working before we went there. Mr. Frank used to laugh and jolly with me. I couldn't tell you the first time he did this. Mr. Darley has seen him jollying me. They would jolly me together. They would play and go on around there with me. It has been so long ago I can't tell you any of the jokes. Mr. Schiff and Mr. Holloway has seen him joking with me. He would say, "Come on I am going to make a graveyard down there in the basement if you don't hurry and bring that elevator back up here," Mr. Holloway heard him say that. Mr. Schiff has seen him playing with me. He would goose me and punch me and tell me I was a good negro. I don't remember anything else he said. Yes, Mr. Darley would goose me and kick me a little bit, just playing with me. Mr. Schiff would crack jokes with me. I don't remember the time. The time Mr. Frank came in the elevator and told me about watching for him, he didn't know Snowball was in there. Snowball was standing right there by me. Mr. Frank could have seen him and he could have heard anything that was said. He saw Snowball standing there, I have been at the factory over two years. I don't remember the day or month I went there. Ittwas sometime in 1910. I don't remember whether it was summer or winter. Miss Daisy Hopkins worked on the fourth floor in 1912. I don't know when she quit. I saw her working from June 1912, up until about Christmas. Yes, I worked on the same floor with her. I don't know whether she worked there in 1913. Miss Daisy was a low lady, kind of heavy, and she was pretty, low, chunky, kind of heavy weight. I don't know what color hair she had, eyes, or her complexion. She was light ski nned. She looked to

be about twenty-three. I know she was there, in June, because she gave me a note to take down to Mr. Schiff. I remember that because the note had June on it. Mr. Schiff said it had "June" on it when he read it. I can't read, but He read that note and he read "June something," it was on the outside ofnthe note. It was on the back of the note. "June" was written on the back of that note. She wrote the note and folded it up and he read "June" on the back of it and he laughed at it. The reason I know she left the factory during Christmas because Mr. Dalton told me she was'nt coming back. He told me that oneSaturday coming down to the factory. I never have seen Mr. Dalton exceptat the factory No, he doesn't work there. I saw him somewhere along in January. He came out that time by himself. He and a lady had been down in the basement. The last time I saw him the detectives brought him down at the station house and asked if I had ever seen him in there. I saw Mr. Holloway at the factory the first Saturday I watched for Mr. Frank. The next Saturday I watched, he was sick and wasn't there. He was sick two Saturdays in June. I disremember whether I saw Mr. Schiff and Mr. Darley. I remember seeing Mr. Darley at the factory on Thanksgiving Day. I don't know what time he left. I couldn't tell you anybody who came to the factory the first Saturday I watched. The second time I think there were some young ladies working up on the fourth floor. I don't know about the third time. I don't know whether anybody was working there Thanksgiving or not. I didn't see Mr. Schiff at all. I will swear that he was not in the office with Mr. Frank. I don't know whether any ladies were working there the next time ornot. I have been back in the metal department, but I never have been on the right hand side where themachines are. I have swept on the second floor, but not in the metal department. I don't know where those vats are back there. I don't know what you are talking about. I

don't know anything about the plating room. I never have been in Mr. Quinn's office. I have put disinfectants in the ladie s and gentlemens closets back there. I wouldn't go inside. I would only go to the door. I stood outside of the door and sprinkled it ~~with~~ in a little way. Outside of that, and going to Mr. Quinn's office I have never been on the left hand side of the factory. I have been there where they wash the lead at, and I have stuck bills in Mr. Quinn's office. Yes, I have been back in there where that dark place is. I don't know how many times I have stacked some boxes back in there. I have been back there three times altogether. Sometime before Christmas. Yes, sir, you can see from the top of the stairway back in there. I have been back there three times altogether. Sometime before Christmas. Yes, sir; you can see from the top of the stairway to Mr. Frank's inside office. A man sitting at Mr. Frank's desk can see people coming up the stairway if he is watching for them. If the safe door is open I don't hardly think he can see them. If it is shut he can. I am certain of that. I thought you were talking about the third floor. He couldn't see people coming up from the first floor. He can see them after they get along by the clock. I left the factory 5:30 Friday afternoon, before the factory stopped. I think I punched when I went out. One of them was ten minutes fast. That was the one on the right, I left there without drawing my money because I knew I wasn't going to draw but $2.75 and I owed the watch man a dollar and I knowed I wouldn't have enough for me and to pay him and I told Mr. Holloway to let Snowball draw it for me,. Snowball drew it for me and met me at the shoe shop at the corner ofAlabama and Forsyth Street. He gave me $3.75. I wasn't supposed to draw but $2.75, and Mr. Frank taken that

dollar for the watchman and stuck an extra dollar in my envelo/e and that made $3.75. I don't remember how many beers I drank Friday. Yes, I told Mr. Scott I got up at 9 o'clock that morning. That wasn't true. I ate breakfast about seven. Yes, I told Mr. Black I ate at 9:30. That wasn't true. I left my ho house between 7 and 7:30. I told Mr. Scott I left somewhere between 10 and 10:30. No, that wasn't true. I got to Peters Street about 25 minutes to 8. I don't know how long I stayed there. Some things in my affidavit that I made that are true. Yes, there are some things in my last affidavit that are true. I was arrest4d on the first of May. I sent for Mr. Black to come down when I made my first statement on May 18th. Yes, I denied I had been to the factory in that statement. I made that statement in the detectives' office. Mr. Black and Mr. Scott were present. They didn't question two or three hours. I did some writing before then, before that statement was made. Yes, I know I did some writing before May 18th. I did some wrting in Chief's office that Sunday. I told Black I bought whiskey on Peters Street at about 10:30. I told them I paid forty cents for it. I don't remember telling them that I bought the whiseky at 11 o'clock. Yes, I told them I then went into the Butt-In Saloon after I went to Earley's for the whiskey. Some of it I told them was the truth and some of it wasn't. They asked me ifI was lying and I held my head down. I held back some of the truth, and when they asked me if that was the truth I hung my head down. I didn't want to give the man away, but I wanted to tell some and let him see what I was going to do and see if he wasn't going to stick to his promise as he had said. I told them I went into Butt-In Salo n and saw some negroes at tables shooting diceand I won ninety cents and bought a glass of beer. I told them that I went to three beer saloons.

I told them after I went home at 2:s0, I went to Joe Carr's saloon and got 15¢ worth of beer. I don't remember telling them that I went there between 3:30 and four o'clock. The detectives talked to me nearly every day after I made my first statement. Sometimes hours at a time. No, they didn't cuss me. Yes. I sent for Black on May 24th. When the statement came out in the papers that's the time I sent for him. As to how I knew it came out in the papers, I heard the boys across the street hollering extra papers. Mr. Black came down after I sent for him and I told him it's awful hot in here, and I told him I was going to tell him something, but I wasn't going to tell him all of it now. I told him that I would tell him part and hold back part. Scott and Black were both there. Yes, I told Mr. Black on May 24th, the time I made the second statement, that I helped tote the little girl. I sure remember that. I think I told them about Mr. Frank getting me to watch for him, that he told me he struck a girl and for me to go back and get her. I didn't give Mr. Frank clear away that time. I kept somethings back. I don't remember now whether I told them at that time or not. I don't know whether I told them about going down the basement or not. The first time I told them I wrote the notes on Friday. They didn't tell me my story wouldn't fit. I don't remember them telling me anything about changing my statement. I told them that was all I had to say. They never told me they wanted me to tell anything else. They didn't say anything to me that it didn't sound right. Mr. Black talked to me right smart and Mr. Lanford talked to me a little. No, they never talked to me a whole day. As to why I changed my statement from Friday to Saturday, I put it on Saturday, because I was at the factory on Saturday. As to why I didn't put myself there on Saturday, the blame would be put on me. I

didn't want them to know that I had written any notes for Mr. Frank. Yes, in that statement I told the officers I was going to tell the whole truth. I told them that I got up at nine o'clock because there was nothing doing at the factory that day at the time I said I was there at nine o'clock, because he had done told me where to meet him at. Yes. I told them that I was going to tell the whole truth. Yes, the reasoh I told them I left home at 9 or 9:30, because there was no anything doing at the factory at that time. I told them it was about 9 o' clock when I looked at the clock, because I don't know what time it was when I looked at the clock, and I told them I had some steak and some sausage for breakfast and a piece of liver and I drank some tea and bread. Well, there was some sausage, but I don't know whether I ate it or not. Yes, I had steak, liver and sausage for breakfast. I know I ate the steak and a piece of liver, and drank a cup of tea and ate some bread. I got up that morning at six o'clock. Yes, I told the officers I got up at 9 or 9:30. I don't remember anything else I told them. Yes, I told them that I went straight to Peters Street and went in the first beer saloon there, and drank two beers and gave a fellow a beer, that had a whip around his neck. I told them three saloons and I called two names. I don't know whether I told them about this whiskey or not. U told them I bought it between 10 and 10:30. No, that is not ture. I told them that on account of my saying I didn't leave home until about 9 or 9:30. I bought it about a quarter to eight. The reason I told these lies about the time was because I didn't want to put myself at the factory twice, because there wasn't anything doing at the factory that morning. That is the only reason I told that story. I don't know when the first time was I told them I got there at 8 o'clock instead of 10 or half pst, it was after I got out of jail up there. I guess I made most of these changes after I got

out of jail. I don't know who the detective was I told about my not leaving home at 9 o'clock. Four of them were talking to me, all at the same time. I think it was Starnes and Campbell that I told that to, about changing the time. I don't remember whether I told them then that I was going to tell the whole truth. I told them that after i got out of jail, after I got back to headquarters. If you tell a story you know you've bot to change it. A lie won't work, and you know you've got to tell the whole truth. Yes, I knew it was bound to come when I told it the first time. I didn't tell the whole truth then, because I didn't want to give the whole thing away then. In the statement where I told about my moving the little girl for Mr. Frank, the reason why I didn't correct it then about the time I bought the liquor, I don't know whether I did it then or not, but I did tell them. I told them I drank four or five beers that morning. I told them at the first saloon I bought two beers. I didn't tell them I bought any wine at that time. I told them I had some wine put in my beer. What they call wine. It wasn't any wine though. I don't know whether I told them that in the statement I made about moving the little girl or not. The wine was put in my beer at Mr. Earl's beer saloon on Saturday morning. I told that to Mr. Black and Mr. Scott, I don't remember when. As to my not testifying about that yesterday, you didn't ask me that. I remember telling you that yesterday. I remember saying I didn't buy any wine. No, I didn't say anything about putting beer in wine yesterday, but I remember I said something about putting wine in beer. I know I told you that yesterday. I don't remember telling them I started straight from Peters Street to Capital City Laundry. I told them I started for the Laundry after leaving Mr. Frank at the factory. If they have got it down there, I must have said so. I don't remember saying it. I told them I met Mr. Frank at

the corner of Nelson and Forsyth Street before I went to the factory. Yes, I told them I went from Peters Street and met him at the corner of Nelson and Forsyth before I went to the factory. As to why I told them that story, because I did meet him there. No, I didn't go straight from Peters Street to meet him at the corner of Nelson and Forsyth as I told them. I went straight from Peters street to the pencil factory. I don't remember when the first time I told the truth about it. I told it either to Mr. Starnes, Mr. Campbell, Mr. Black or Mr. Scott. I told it after I got out of jail, I remember telling the officers when he said "Ah , ha" when I met him at the corner. I don't remember telling the officers that he asked me where I was going and I told him I was going to the Capital City Laundry to see my mother. I don't remember saying that to the officers. If I did say that it was not the truth. As to why I lied about that, because I did tell Mr. Frank down there when I left the factory that I was going to see my mother. I told the officers he stayed at Montag's about twenty minutes. I did tell you yesterday that I didn't have any idea how long he stayed there, because I haven't any idea now. As to why I didn't say yesterday that it was twenty minutes, because you didn't ask me. I didn't tell Mr. Dorsey how long it was, because he didn't ask me what I told the detectives about it, but I told the detectives that. I told them that story because I didn't have any idea how long he stayed there. I don't know how long Mr. Frank stayed there. I told the officers twenty minutes as that was the best I could do about it, so I just told him twenty minutes. I told the detectives about wanting me to watch for him when I got back to the factory. I don't know why I didn't tell them that at the time I told them about moving the body. I don't remember who I told it to or when, but I told them. I did tell them about

Mr. Frank stomping his foot. I don't know whether I told them at the time I told about helping move the body. I told it to Mr. Scott, Mr. Black, Mr. Campbell, Mr. Starnes and Mr. Dorsey. Mr. Starnes and Mr. Campbell wasn't in there sometimes when I told it. No, I didn't tell it to Mr. Scott and Mr. Black. They dropped the case and Mr. Starnes and Mr. Campbell taken it up. They came down and was talking to me for a month or more in my cell. Yes, I told Mr. Black about Frank stomping his foot and Mr. Scott. I told them all about it. Yes, I told the detectives that the first party I saw going up the factory after I got back from Montags was Miss Mattie Smith. That was a mistake. I didn't see Mr. Darley go up after I got back from Montag's. No, I didn't say yesterday that I saw him go up after I got back from Montag's. I don't know whether Mr. Darley saw me or not. I was sitting right there at the box. He could have seen me if he had looked, so could Miss Mattie Smith. The rest of them could have seen me if they had looked. Yes, I told the officers the first time I saw them go up was after I got back from Montag's. That was not so. I was just mistaken about it. Don't know when I corrected the mistake or to whom. Yes, I stated it to Mr. Dorsey. It was after I came from jail. I have corrected it to Mr. Starnes and Mr. Campbell too. It was about 11:30 when Mr. Darley left the factory, right after we got back from Montag's. It may have been about 11 o'clock. Miss Mattie Smith left the factory somewhere about 9:30. It was after we got back from Montag's that I saw Mr. Darley leave. Mr. Holloway and the pg-legged negro went upstairs and came down before Mr. Darley left the factory. They could have seen me sitting on the box, as they came out the factory. Mr. Holloway left about 10 or 15 minutes after Mr. Darley left. It may have been

four or five minutes. After Mr. Holloway left, I told them Mr. Quinn came in. I may have told them that a lady dressed im green was the next one. That wasn't true. A lady in green did go up before Mr. Darley came down. She came down before Holloway and Darley left. If I told the officers that she went up after they left, I made amistake. Mr. Quinn was the next man that went up after Mr. Holloway came down. Yes, I said that yesterday. Yes, I said yesterday Mr. Quinn was the last man I saw come down . No, I didn't say yesterday Miss Monteen Stover came down after Mr. Quinn came down. I might have told the officers that I saw Mr. Holloway return upstairs, turn to the right toward Hunter Street and go in the factory. If I did, I made a mistake. I don't remember all the mistakes I made. No, I have never told about a lady going up there after them six or seven minutes, I was mistaken. I don't know whether I have ever corrected that nistake or not. She went upstairs and Mr. Quinn went up and came down before she did. If I told the officers she stayed there 7 or 8 minutes and came right down, I made a mistake. I don't think I corrected that mistake at all. I don't know how long it was after she came down before anybody else wennt up and down. If I told the officers it was 10 or 15 minutes that was a mistake. I don't think I corrected that mistake at all. I haven't got any idea at all how long before the lday in green came down that anybody else went up . Yes, I told Mr. Scott and Mr. Black that the only people who went up at all were Miss Mattie Smith, Darley, Holloway and the woman in green, and nobody went up and down until Mr. Frank whistled. No, that wasn't true. The reason why I told that story wasbe-

cause I didn't want them to know that these other people passed by me, for they might accuse me. The reason why I didn't tell them was because I didn't want people to think that I was the one

that done the murder. I told them that I saw those four men go upnbecause I didn't think they saw me sitting there, and I didn't tell of seeing the other people for fear they would report on me. The reason why I told the police about those four going up there, because that was all I could remember that went up and down. I don't know when my memory got fresher about other people going up and down. I think it was after I got out of jail. I think I corrected that with Mr. Starnes, Mr. Campbell and Mr. Dorsey, at police headquarters. After I corrected with the detectives down at headquarters, they took me to Mr. Dorsey's office. I have been in Mr. Dorseys office three times. Mr. Dorsey was down at headquarters with me I think about four times. As to whether it took Mr. Dorsey about seven times to get my testimony straight, it didn't take him that long to get it straight, it took that long for me. As to why I didn't tell it all, I didn't want to tell it all. I was intending to hold back some. I didn't want to tell it all right at one time. I just told a little and kept back a little. Yes, and Mr. Dorsey went down seven times while I was telling some and holding back some. They didn't ask me to take back any stories. No, it didn't xxxxxxxxxxxxxxxxxxxx take Mr. Dorsey seven times to tell the story. Yes, I said I added to it every time he went down. But he wouldn't come back and try to do anything with it. I didn't tell the officers that I went to a moving picutre show after I left the factory. I said I looked at the pictures from the outside. I told them I went on Peters Street and looked at the pictures from the outside. I stayed there about ten or fifteen minutes. I drank two glasses of beer. I don't know whether it was in the first, second or third statement that I told about watching for Mr. Frank. Two or the detectives were there. Yes, I looked the front door that Saturday of the murder. I don't know what

time. It was somewhere after dinner. I can't give you any estimate. It was later than 12 o'clock. It wasn't one o'clock, because It was four minutes to one after I went upstairs and [redacted] came downstairs and unlocked the door. Yes, I heard the stamping before I locked the door, and I heard the scream before I heard the stamping. After he stamped for me I went and locked the door. I couldn't tell to save my life how long the door stayed locked. I was upstairs between the time I locked the door and the time I went down and un.locked it. I unlocked the door before I went upstairs. I locked the door when he stamped and I unlocked it when he whistled. As soon as he whistled I unlocked the door and went upstairs. ~~All the time I was upstairs the door was unlocked.~~ Mr. Frank sent me back in the metal department. He wouldn't go back there with me. When he whistled that was the signal for me to unlock the door and the stamping was for me to unlock the door. He showed me how to lock the door that day. He showed me how to lock the door on Thanksgiving Day too. I don't know how he came to show it to me again. I guess he thought I forgot it. When I went down to leave the doors were unlocked, both doors were unlocked. The only thing I remember Mr. Frank telling me was not to let Mr. Darley see me around the door, that a young lady would be up there after awhile to chat, and he wanted me to watch for him. No, he didn't tell me what he wanted me to meet him at Nelson and Forsyth Street for. Yes, I could have come back to the factory just as well as going to meet him at Nelson and Forsyth Street if he had told me that. I don't know why he told me to meet him at Nelson and Forsyth. I don't remember telling the officers that I met him accidentally at Nelson and Forsyth Street. Mr. Frank stayed at Montag's about an hour. Mr. Frank went to Montag's between 10 and 10:30 and stayed about an hour. I guess it was about a half an hour. Mr. Frank didn't say a thing about why he wanted me

at the corner of Nelson and Forsyth Street. Before we went to Montag's he said he didn't want me to say anything to Mr. Darley that there was going to be a young lady there after a while, and he told me that again after we came back from Montag's. Mr. Frank gave me that signal about stamping and whistling on Thanksgiving Day and he repeated it again that day. I told yesterday how he done it, like I am telling now. I think I am telling the truth now. We had been back from Montag's about five minutes when the lady in the green dress went up. She stayed up there a good little while, ten or fifteen minutes. I didn't tell the officers the peg-legged negro went up first. I didn't tell them in the first statement. I may have told them in the next statement. The peg-legged negro didn't stay up - stairs no time. Came back down with Mr. Holloway. Mr. Darley came down five or ten minutes after Mr. Holloway came down. Yes, that was after he came back from Montag's. I have no idea what time it was. After Holloway came down, the lady with the green dress came down. She went on out and Mr. Quinn came in. He went up and came down before Monteen Stover came in and before Mary Phagan came in . Yes, I am certain of that. No one else came in after Mr. Quinn except Mary Phagan. Mr. Quinn, Monteen Stover and Mary Phagan went in almost the same time. They went and came out almost together. Quinn first, Mary Phagan next and Monteen Stover next. Mr. Quinn had already come out of the factory when Mary Phagan went up. I didn't see Mrs. Barrett, or Miss Cornithia Hall or Miss Hattie Hall or Alonzo Mann, or Emma Clarke. I didn't see none of them. I never saw Mrs. White go in there at all that day. I was sitting on the box all the time. I got up twice to make water. I made water against the elevator door, right in front of the elevator shaft. Miss Stover had done gone then, and Mr. Quinn also. I

went to sleep after Miss Monteen Stover came down. The d[redacted]. Don't know how long I was asleep, maybe ten or fifteen minutes. I heard the scream before I went to sleep, before Monteen Stover ever went in there. Mr. Quinn had already gone. I told the officers I didn't see Mary Phagan go up at all. I didn't tell them I heard any scream. I don't know when I first told that story. I told Mr. Starnes and Mr. Campbell. That was after I got out of jail. I said I heard the scream before I went to sleep, which I did. Monteen Stover came up and went down before I went to sleep. I told Mr. Starnes and Mr. Campbell about somebody running back on tiptoes. I don't know when I told them. He woke me up stamping, then I locked the door, and went to the box and kicked on the side of the elevator door. It was about ten or fifteen minutes after he stamped that I heard him whistle. When he whistled I unlocked the door. I don't know when I first told about Mr. Frank standing at the top of the stairs, trembling and nervous. I told Mr. Dorsey, Mr. Starnes and Campbell. I don't know why I didn't tell it the day I told them I was going to tell the whole truth. I didn't mean to keep back anything then. That day I told them everything I remembered. When I got to the top of the stairs, Mr. Frank had that cord in his hands. I don't remember when I first told about that. If I didn't tell it that day when I said I was telling the whole truth, I just didn't remember it. When I told Black and Scott that I was telling the whole truth I didn't say anything about Mr. Frank having hit the little girl. I thought I had told them that. I have told that to some of the officers. I remember now that I told them that. He told me to get her out of there some way or other. He didn't say she was dead. I didn't know she was dead. I went

back there and found a cord around her neck. When I looked at the clock it was four minutes to one. That was after I went and seen the girl was dead, and he told me to bring her up there. I was standing at the steps, I could see the clock from there. Then I went back and got a piece of striped bed tick, something like your shirt there, had whitish looking stripes on it. I taken the cloth and spread it down and rolled the little girl in the cloth and tied it up . When I laid her down in the cloth, I tied the cloth around her. I did my best. Her feet were hanging out of the cloth, also her head. If I didn't tell Black and Scott anything about the hat and the slippers and the ribbon, they must not have asked me. I know I took the things and pitched them in front of the boiler. The elevator don't hit hard when it hits the ground. The wheels at the top don't make any noise. The motor makes a little noise , something like a June bug. The elevator hits the dirt at the bottom, but it don't make any noise. I left the factory about 1:30. The reason why I didn't tell Scott and Black I wrote four notes instead of two, they didn't ask me how many I wrote. Another reason why is, because Mr. Frank taken that and folded it up like he wasn't going to use it. I wrote three notes on white and one on green paper. The green one is the one he folded up like he wasn't going to use it. I don't know how long it took me to write those notes. It took me somewhere about two minutes and a half, I reckon. The reason I didn't tell Scott and Black about burning the body, because someone had done taken them off the case. Mr. Scott told me. The first time I told that was to Mr. Starnes and Mr. Campbell after I came back from jail. I don't remember telling the officers that Mr. Frank told me he was going to send those notes to his folks up North. If they have got it down there I must have said it. He told me he was going

to write to his mother and tell her that I was a good negro. The reason I didn't take the parasol down with the shoes, it was too far back for me to see it. I got my hair cut last week. My lawyer sent the barber. They gave me a bath and bought me clean clothes. My wife gave me my shirt. I didn't read any newspapers on Monday about this crime. It don't do me no good because I can't make any out. I didn't try to read any that day. I washed that shirt on Thursday, May 1st, in the metal room about half past one or two. As to how that dung came to be in the elevator shaft, when Mr. Frank had explained to me where he wanted to meet me and just as I started out of the place that negro drayman came in there with a sack of hay and I gave him a drink of whiskey that I bought at Earley's saloon on Peters Street that morning, and he suggested that I go down in the basement and do it, there's a light down there, and I went down the ladder and stopped right by the side of the elevator, in front of the elevator, somewhere about the edges of it. No, I didn't see the two white men go up and talk to Mr. Frank in his office that day. No, I didn't see a man by the name of Mincey at the corner of Carter and Electric Avenue that day. I didn't tell him that I killed a girl that day. I didn't say I killed one today and I didn't want to kill another. I didn't tell Harlee Branch that Mary Phagan was murdered in the toilet room on the second floor, or that the body was stiff when I got back there, or that it took at least thirty minutes to get the body downstairs and write the notes. I don't remember telling Miss Carson on May 1st, that Mr. Frank was innocent. I didn't have any conversation with Miss Mary Pirk on April 28th and she didn't say that I committed the crime and I didn't shoot out of the room immediately after she said that I didn't tell

Mill Carson on Monday that I ws drunk all day Saturday. I didn't see her at all on Monday. I didn't tell Mr. Herbert Schiff on Monday that I was afraid to go on the street, that I would give a million dollarsif I was a white man. I said if I was a white man ~~I would~~ go on out. I didn't say nothing about no million dollars because I don't know what it takes to make a million. I didn't ask Miss Small on Monday what the extra had in it and I didn't say Mr. Frank is just as innocant as you are. I didn't ask Miss Fuss on Wednesday for an extra. I didn't tell her that I thought Mr. Frank was as innocent as the angels in heaven.

RE-DIRECT EXAMINATION.

I never was in jail until April 26th. I have been down at police headquarters several times. First time I was arrested was for throwing rocks. I was a small boy then. I was arrested another time for fighting black boys, then I was arrested about drinking and disorderly, and the last time I was arrested was about fighting again. I never have fought with a white man or white woman. I never did see Mr. Frank in jail. The last time Police officers took me down to jail to the door where Mr. Frank was. I saw Mr. Frank was in the station house before I had talked. He looked at me and smiled and bowed his head. While I was writing the notes, Mr. Frank took the pencil out of my hand and told me to rub out that "s" I had down there on the word "negro." I saw Mary Phagan's pocket book, or mesh bag in Mr. Frank's office after he got back from the basement. It was lying on his desk. He taken it and put it in the safe. When I went back to see about the girl, It wouldn't have taken more than about a minute to go down and lock andunlock the door. He had time enough to do it. Mr. Scott talked to me about three hours and a half one Thursday. Mr. Frank told me he would send me away from

here if they caught me. He would get me out on bond and send me away. I never saw Mincey before seeing him at the station house in Mr. Lanford's office. I had orders from Mr. Frank to write down how many boxes we needed and give it to him. I didn't tell Mr. Black or Mr. Scott about the mesh bag because they didn't ask me. I disremember when I first told about it. I think it was after I was in jail. I told Mr. Dorsey about it after I came out of jail. Mr. Frank knew for a whole year that I could write. I used to write for him the word "Luxury", George Washington," Magnolia, Uncle Remus, "Thomas Jefferson." that's the name of pencils. I spell "Uncle Remus" "O-n-e R-i-n-e-s". I speall "Luxury" "L-u-s-t-r-i-s". I spell "Thomas Jefferson" "T-o-m- J-e-f-f or J-e-i-s-s." I speall "George Washington" J-o-e W-i-s-h-t-o-n" After Mr. Frank found out what I meant he understood it. I spell "ox" "o-x". Yes I wrote him orders to take money out of my wages. The pocket book was a wire looking whitish looking pocket book, had a chain to it. You could take it and fold it up and hold it in one hand. When I wrote the word "Luxury" and "Thomas Jefferson", I didn't have anything at all to copy from. I was writing it down for Mr. Frank.

MRS. J. A. WHITE, recalled for the State.

I have seen this man before at police headquarters (indicating Conley) about a month after the murder. mAt that time I did not identify him as being the man I saw sitting on the box. The man sitting on the box was about the same size as Jim Conley. I couldn't state it was Jim Conley. He was sitting in a dark place, and he looked black to me. He had on dark clothes. I don't know whether he was bareheaded or not. I told Bass Rosser about this on May 7th. That was the first time I told of it.

CROSS EXAMINATION.

I told the detective about this as soon as I saw one. I never kept it a secret from anybody. I spoke to Mr. Wade Campbell about seeing the darkey. I didn't tell him that I saw the negro as I went up into the factory about 12 o'clock. I didn't tell him that, when I came down the steps the last time, I didn't see anybody.

C. W. MANGUM, Sworn for the State.

I had a conversation with Mr. Frank at the jail about seeing Conley and confronting him. Conley was on the fourth floor, Chief Beavers, Chief Lanford and Scott came down to see Mr. Frank with Conley and asked me if they could see him. I went to Frank and told him the men were therewith Conley and wanted to talk with him if he wanted to see them. He said, "No, my attorney is not here and I have nobody to defend me." He said his lawyer was not there; that no one was up there to listen at what might be said.

N. V. DARLEY, recalled for cross-examination.

On the ground floor the door to the Clark Woodenware Company was nailed up immediately after that Company left there. We found it broken open after the murder and we nailed it up again. It was two or three days after the murder. Sitting at Mr. Frank's desk, the most that one can see is about half of clock #2, which is on the left of clock #1. If the safe door was open in the outer office, you have no view into Mr. Frank's office from the outside. You might tiptoe and look over the door. A man of my height could just tiptoe and see over it. The packing room next to Mr. Frank's office works from 11 to 17 ladies and men. Passing by the elevator shaft as you go in the building on ground floor, you come to a door to Clark Woodenware Company's place, which was nailed up immediately after that Company left there. We found it broken open after the murder. I don't know what day, it must have been two or three days after, and we nailed it up again. (Witness identifies various portions of

121 factory from the factory model (Deft's Exhibit 4). There is no

lounge, sofa, cot or bed in the whole factory. I found two boxes down in the basement in Clark Woodenware side of old dirty, rotten stuff, too dirty and rotten for a human being to rest upon. It's boggy in there. They had on top of them some dirty, filthy, nasty crocus sacks. There is no lojnge, bed , sofa or anything of the sort in the metal room. I have never seen a chair in there. I have never seen any blood under the machine that Barrett claims he found hair on. I never saw any blood on the place the negro claims the little girl's body was lying. You can get into the metal room either from the front or the back if the back door is open. You can lock the back door from the inside. There is a cross bar across the door. The rule was to keep it locked, but a great many times I found it unlocked. It was very dark around the elevator on the first floor on April 26th. It was a cloudy day and darker than usual because the front doors were closed. It's too dark to stand on the outside and see through the elevator. I left the factory with Mr. Frank on his way to Montag Brothers. I never saw Jim Conley that day. I never saw Mr. Frank talk to him or speak to him or come into contact with him in any ay that day. I have never goosed or pinched Jim Conley or jolli ed with him. I kicked him when I caught him loafing, and sometimes I would take a piece of board to him and he would laugh ever time I did it. I have never seen Mr. Frank goose or pinch him or play with him or jolly him. No, I never knew Daisy Hopkins. I have never seen Dalton until this morning. From June 1912, until January 1913, I left the factory at twelve o'clock on Saturdays, and usually came back between five and six. I did that most every Saturday during the two years that I have been there.

may have missed one time. It not more than a-

sion do I recall that Mr. Frank said he would not be there on

Saturday afternoon. I would visit the factory every Saturday afternoon between five and six to find out how the financial was for the week. I found Mr. Frank in his office on every occasion except the one I have mentioned above. Mr. Schiff would help him on the financial. A few Saturdays I have gone there and Mr. Schiff was not there. He may have been on his vacation. I here and discharge all the help. I come in contact with the help ninety per cent. more than Mr. Frank. Mr. Frank has nothing to do with employing or discharging them. On Saturdays, Holloway is supposed to leave the factory at four o'clock and the night watchman comes on. We had no negro night watchman there last September as stated by Mr. Dalton. Our night watchman was Mr. Kendricks, a white man. The first time we ever hired a negro night watchman was three weeks before the murder. As to who else stayed at the factory on Saturday afternoons, usually the office boy, sometimes the stenographer, Walter Pride, who cleans up the third floor, I have never known of any other time but Saturday that the financial sheet was worked on, except possibly a holiday. I saw Conley on Monday. He looked to be excited and when I spoke to him he failed to look up as he usually does. I went around the factory that morning and looked at everybody to see if I could pick out a man that looked suspicious, and Jim Conley was the man I thought looked most suspicious. The latter part of last year I issued orders that the sweepers must stop cleaning up by twelve o'clock and if they hadn't cleaned up by that time they would have to knock off and leave the factory. If they stayed there after twelve o'clock I didn't know anything about it. Harry Denham usually stayed in t[illegible] every other Saturday afternoon to cl[illegible] and oil the machinery and he selected someone to stay with him.

He would do this about twice a month. The girls in the packing department did quite some overtime work on Saturday afternoon.

RE-DIRECT EXAMINATION.

I have made no contribution toward the fund to defend Frank. I don't know anything about Diasy'Hopkins' general character. I don't know who nailed up the door on the Clarke Woodenware side. Lots of people have been there all over the factory. If a body had been shot down the chute, behind those boxes, it would have been hidden more than where it was found. The boxes around the chute are piled nearly to the top. I never noticed any difference in the boxes Sunday from what I left them there Saturday. No, I don't know anything about Conley being there Saturday afternoons and watching. He wasn't there by my instructions. There is a good deal of water on the floor in the metal room. On pay day in order to keep the people from coming down the back, the instructions are always to close the back door to the metal room. There is no special reason for the paint to go out of the polishing room, but it is out in other places. It is carelessly done. You can see haskoline scattered around. The floor in metal room where body is supposed to have been found has a rise of several inches in it, something like an edge. As to whether a man standing up and looking over the safe door hasn't got a vision going beyond the clock so that he could see everybody that registered, he couldn't see it. I tried it. I don't know whether either the clock or the desk had been moved before I went to see. My recollection is that the table is nailed to the wall and the clock screwed to the table. You can tear the whole thing ap and move it. The desk could not be moved without my knowing it. I didn't have the clock fixed after April 26th.

RE-CROSS EXAMINATION.

On Friday last, I made an experiment by sitting

 at a desk and leaned over as far as I could to see through

the outer door towards the clock. I could see half of the circles on clock #2. I could not see any of the other clock at all. The clock and desk could not have been moved without my instructions. The paint is scattered all around. It gets all over the place and we can't prevent it. We never have washed the metal room floor since I have been there. We never found any water or blood where it was said the girl's body was found in the metal department. The view I got from front door on April 26th, into area around elevator shaft was blocked by boxes.

RE-DIRECT EXAMINATION.

I communicated immediately with the police when we found the blood back there. I think Harry Scott was the first man I reported Conley's nervousness to. It was on Monday, April 28th.

E. F. HOLLOWAY, Recalled for cross examination,

I am the day watchman and time keeper. I look after the register to see that everybody registers. No, it was not the habit of Conley to register or not as he pleased and to get his pay anyhow. If he didn't register I always got after him. I applied the same rule to him as I did to anybody else. I never saw Mr. Frank goose, pinch, or joke with Conley. I never saw him touch him in any way, unless it was when he would go in the office to borrow money, I would see him hand him a quarter or something. He surely was a good hand at borrowing, but Mr. Frank would never let him have a nickel, but what he owed him. Up till twelve months ago the sweepers stayed at the factory until about 2;30, but then they made a rule that any sweeping that wasn't done by noon on Saturday would have to go over until Monday and since that time no negroes have been there since 12 o'clock. He never had any negro night watchman in July, August, September, or any time last Fall. We never had a negro night watchman until we hired Lee, which was about 3 weeks before the murder. Since June of last year, on Saturday afternoons,

I always stayed around the factory and looked after seeing that nobody came in or out, unless they had business. I never have seen anybody goose Conley. Sometimes I would kick him to make him go on to his work. The door that leads to the Clark Woodenware place never was locked. It was nailed up when the Clark Woodenware moved out of there. I nailed it up myself. It was open on the Monday after the murder. It lead back to a chute in the rear, and to two water closets on the right. Nobody occupies that now, I was at the factory every Saturday since last June excepting legal holidays when the factory was shut down. I did not miss a single Saturday in July, August, September, October, November, December, and January, excepting legal holidays, On Thanksgiving day I stayed there until 12 or one o'clock. I have never missed a Saturday since I have been working at the factory. I would be relieved on Saturdays at 4:30 p.m. I would go all over the building trying to see that everything is all right. That was my business. I have never known Mr. Frank to have any woman on Saturdays excepting his wife. She came there on Saturdays and went home with him, about once a month. Mr. Schiff helped Mr. Frank on his books on Saturdays. Conley never did watch the door downstairs. If he did, it must have been after #4:30 p.m. I never did see him giving signals to Mr. Frank and Frank giving him

A

Signals from upstairs. I was obliged to have seen them ifhe had watched the door. I sat mainly in the front of the building ~~in~~ to see that nobody came in the building. I do not recall any Saturday afternoon that Frank and Schiff missed except when Schiff was off on his vacation. I have never seen any of them bring any women in there or take any out. I have never been sick or missed a single Saturday since last year. I would leave about 4:30 Saturday afternoon. I have never seen Dalton in the factory at all. I wouldn't have let a fellow like that in the building unless I knew what his busines was. There was nobody practicing any immoralities in the building. If they did I would know it. I would have put them out quickly. Daisy Hopkins quit sometime in May or June last Spring. She has never been there since she quit. Mr. Darley left the factory between 9 and 10 o'clock on April 26th. He was not there after 11 o'clock at all. If he was, he was there after 11:45, the time I left there. I have never seen the front doors locked on Saturday. I was at the factory until noon on Thanksgiving Day. I saw no girls with white shoes and stockings there that day. I never saw Jim Conley that day. I never saw any woman at the factory that day. I sure would have seen Conley if he had been watching the door that day. I have seen Mr. Frank at the factory every Saturday afternoon after he comes back from lunch. I would pass in and out of his office three and four times in the afternoon. I have never seen a glass of beer as long as I have been there. I have never seen any women up there. He would be working on his books. Mr. Schiff would be helping him. Thee stenographer and shipping clerk would sometimes be up there. People would be liable todrop in there on business and I would send them up to Mr. Frank's office. I always kept the door on Saturdays. I never let it over to Conley or anybody else. I have let Mrs. Frank in and would tell her to go up in the office and have a seat.

B

This man Wilson worked on Saturday afternoon most all the time. Oiled up the motor and cleaned it while the factory was closed. Pride, Harry Denham, Charlie Lee, and Fast usually worked there on Saturday oiling the machinery after they shut down and different things. They were not shut off by any doors from going anywhere they wanted in the factory. They were liable to come down and around ~~[illegible]~~ any time. I have never seen the doors either to the outer or the inner office of Mr. Frank locked. They have got glass fronts in them that you can see through, and it would not have done any good to have shut them. The windows in Mr. Frank's office looked right out on Forsyth Street. The shades to them are torn up so they don't amount to much. In the morning they will pull them down to keep the sun out. When they are up you can see across the street. Salesmen frequently visited Frank on Saturday afternoons when they came in from their runs without any announcement. I have never known Mr. Frank to refuse to see any of them. It is very dark about the elevator shaft on the ground floor. The shaft is about ten or twelve feet from the steps. If a girl was coming down the steps and a man was in that dark place it would be a very easy job for him to throw her down the ~~[illegible]~~ shaft. He could grab her before she ever saw him because she would be looking toward the door. The members of the firm of Montag Bros. frequently visited the factory on Saturday afternoons. I remember seeing Drayman McCrary on April 26th. He came around to see if there was any hauling. I don't remember the time. I never saw Conley on April 26th. If he was there he was skulking around and hiding. I never saw McCrary talking to him that day. On Monday morning I saw Conley, instead of being upstairs where he ought to be sweeping, he was down in the shipping room watching the detectives and reporters. I caught him ~~[illegible]~~ washing his shirt. Looked

like he tried to hide it from me. I picked it up and looked at it carefully and it looked like he didn't want me to look at it at all. The day before that he went out with a pair of overalls corresponding to this blue shirt that he has, and he said he wanted to carry them to a negro at Block's candy factory and he had not had time to have gone to the candy factory before he came back and said that they were taking stock over there and would not let him in. The overalls have been washed and dried and I could not tell if there is anything on them or not. I don't know whether he can write or not. At your request today I walked from the middle of the cartrack at the corner of Broad and Hunter to the pencil factory and then upstairs in Mr.Frank's office. I walked just in an ordinary way like I thought a lady would walk. It took me two and a half minutes. I walked from the corner of Marietta St. and Forsyth St. to the pencil factory. It took me six minutes.

RE-DIRECT EXAMINATION.

I didn't have any conversation with Kendrick, the night watchman since this murder was committed as to whether or not Frank ever called him after he left the factory that night. No, I did not try to get Kendrick to swear that. No, I didn't tell Whitfield the day before they turned up that big club "Be sure to come back tomorrow, you will be certain to find something." So far as I know the general character of Daisy Hopkins is good. I don't remember telling you the contrary. I don't deny signing that affidavit. (Ex."I"-State). I don't remember telling you in this paper (State's Ex."I") "she is anything but a nice girl - you can't depend on what she says. Yes, I said it in the affidavit I gave it was 10;45 when Mr. Frank and Mr. Darley left. Mr. Frank got back about 11 o'clock. That was all guess work about the time they left. I never said anything about getting the reward for Jim Conley [illegible] days after they came down after the negro, if this negro is

convicted he is my negro. I knew about the reward being offered. If I told you that I sometimes left the factory at three o'clock I meant four o'clock. Jim Conley worked regularly at the factory except when he was in the stockade thirty days. Conley registered every morning, but a lots of times he would not register at dinner and sometimes at night. I nailed up the door that leads into the Clarke Wooden Ware place on Monday because we never let that door stand open. Mr. Darley told me to do it. I know it was not open on Saturday. It was nailed up Saturday noon when I left there and it was open Monday when I got there. The chutes back there were nailed up. The one next to the rear end of the building I know was nailed up to keep the Clarke Wooden Ware people from coming up through there. Boxes were piled up back in there. That stairway back there has been nailed up for some time. Hasn't been used since Christmas. If the negro went out and bought beer I didn't know it. I never saw him. I don't recollect whether the dr ayman was up there April 26th to get his pay or not. There was so much excitement in the factory on Monday that we shut down about 9:30. Nobody stayed at their work. Jim Conley quit work like everybody else and went out. As to one thing that Conley did that the others didn't do I haven't got any. The short he was washing was the same short he has been wearing all day. I say that he was trying to hide the shirt because he was trying to push it over behind the pipe where you couldn't see it. He had the shirt on when he was arrested. He was not trying to hide it then.

RE-CROSS EXAMINATION.

I was subpoenaed to Mr. Dorsey's office by regular court subpoenas. I thought I had to go there. There were three or four men when I got there.

1

GEORGE EPPS, re-called for Cross Examination.

I was present on Sunday after the murder when a gentleman came out to the house and talked to me and my sister about when was the last time we had seen Mary Phagan. He didn't ask me, he asked my sister. I wasn't there. I was in the house. I dien't hear him ask my sister that.

HARRY SCOTT. Re-Called for State.

It took Jim Conley two or three minutes to write out the notes that I dictated to him.

CROSS EXAMINATION.

I knew on Monday that Mrs. White claimed she saw a darkey at the pencil factory. I gave that information to the police department. Mr. Frank gave me the information when I first talked to him. I never inquired of Frank or any of the pencil factory people if Conley could write. Sunday May 18th. I was present when Conley made his statement, May 18th. I wrote it out myself. (Defendant's Exhibit 36) He made no further statement on that day. He stated that he did not go to the pencil factory at all that day. At that time I knew he could write. He told me everything that was in that statement. The information that Conley could write came from the pencil factory on May 18th. On May 18th I dictated to Conley these words: "That long tall black negro did by himself." I dictated each word singly and I should judge it took him more than six or seven minutes to write it. He writes quite slowly. When he was brought before Mrs. White to see if she could identify him he was chewing his lips and twirling a cigarette in his fingers. He didn't seem to know how to hold on to it. He could not keep feet still. He positively denied on May 18th that he had anything to do with the murder of Mary Phagan and that he was at the factory at all. We talked very strongly to him and tried to

WRINKLE IN PAGE

make him give a confession. We used a little profanity and cussed him. He made that statement after he knew that I knew he could write. We had him for about two or three hours that day. He made another statement on May 24th which was put in writing. (Defendant's Exhibit 37.) He was carried to Mr. Dorsey's office that day and went over the statement with Mr. Dorsey. He still denied that he had seen the little girl the day of the murder. He swore to all that the statement contains. That statement was a voluntary statement from him. He sent for Mr. Black and we went there together. We questioned him again very closely for about three hours on May 25th. He repeated the story that he told in his statement of May 24th. We saw him again on May 27th in Chief Lanford's office. Talked to him about five or six hours. We tried to impress him with the fact that Frank would not have written those notes on Friday. That that was not a reasonable story. That showed premeditation and that would not do. We pointed out to him why the first statement would not fit. We told him we wanted another statement. He declined to make another statement. He said he had told the truth. On May 28th Chief Lanford and I grilled him for five or six hours again, endeavoring to make clear several points which were far fetched in his statement. We pointed out to him that his statement would not do and would not fit. He then made us another long statement on May 28th (Defendant's Exhibit 38. having been told that his previous statement showed deliberation; that that could not be accepted. He told us then all that appears in the statement of May 28th. He never told us anything about Mr. Frank making an engagement for him to stamp for him and for him to lock the door. He told us nothing about seeing Monteen Stover. He did not tell us about seeing Mary Phagan. He said he did not see her. He did

Lemmie Quinn. Conley was a rather dirty negro when I first saw

him. He looked pretty good when he testified here. Frank was arrested Tuesday morning at about 11:30;on May 29th, we had another talk with him. Talked with him almost all day. Yes, we pointed out things in his story that were improbable and told him he must do better than that. Anything in his story that looked to be out of place we told him wouldn't do. After he had made his last statement we didn't wish to make any further suggestion to him at that time. He then made his last statement on May 29th(Defendant's Ex. 39). He told us all that appears in that statement. We tried to get him to tell about the little mesh bag. We tried pretty strong. He always denied ever having seen it. He never said that he saw it in Frank's office or that Frank put it in his safe. We asked him about the parasol. He didn't tellus anything about it. He didn't tellus anything about Frank stumbling as he got on the street floor at the elevator and hit him. Since making this statement on May 29th I have nottcommunicated with Conley and have not seen him. He never told us that he came from his home straight to the factory. He denied knowing anything about the fecal matter down in the basement in the elevator shaft. He never said he went down there himself between the time he first came to the factory and went to Montag's. He never said he thought the name of the little girl was Mary Perkins. He never said anything at all about Mary Perkins. We pressed him that day as to whether he saw Mary Phagan or not. He finally told us that he saw her dead body. He never did tell us that he heard a lady scream though we asked him about it. He said he did not hear anybody scream whilehe was sitting on the box. He said he didn't hear anything at all that day. He never said anything about Mr. Frank having hit her and having hit her too hard. He never said anything about somebody running on tip toes from the met al department and back [illegible] and he did not hear any stamping. He did not tell us anything about Mr. Frank tell-

ing him how to lock the door. He did not tell us anything about Frank having a cord in his hand at the tip of the steps or that Frank looked funny about his eyes or that his face was red. He didn't tell us that he went back there and found the little girl with a rope around her neck and a piece of underclothing or that he went back to Mr. Frank and told him the girl was dead, or that he wrapped her in a piece of cloth. He said it was a crocus sack. He did not say anything about Mr. Frank saying "Sh-sh." He didn't say that he putt the sack on his shoulder and that body dangled round about his legs. He said he never saw the ribbon; didn't know where it was. We asked him whether there was any thought of burning the body and he said not. He didn't know anything about that. He never said anything about his promising to come back and burn the body or that he said to Mr. Frank "You are a white man and done it and I am not going down there and burn it myself;" or that Mr. Frank had arranged to give his bond and send him away; or that Frank said he would have a place to get in by when he came back to burn the body, or said he owed a Jew ten cents a paid it. He did not tell us of any conversation he had with Mr. Frank on Tuesday after the murder in which Mr. Frank said "If you had come back on Saturday and done what I told you there wouldn't have been any trouble." As to the scene between Conley and me when I undertook to convince him that I knew he could write on Sunday May 18th, I called him up at Chief Lanford's office, gave him a paper and pencil and told him that we understood he said he couldn't write and now we knew he could write and we wanted him to write what we told him. He sat there and looked at us while we were talking and I told him to write as I dictated [illegible] we convinced him that we knew he could write and then he wrote.

RE-DIRECT EXAMINATION.

I got information as to Conley writing through my operatives while I was out of town. McWorth told me when I returned. I got no information personally about Conley being able to write from the Pencil Company people. Personally I did not get information as to Conley's being able to write from Pencil Company. I got it from outside sources, wholly disconnected from the pencil company. As to whom I first communicated anything about Mrs. White's statement about seeing a negro down there, my impression is I told it in my many conversations with Black, and Chief Lanford and Bass Rosser. Don't know the day. It was shortly after April 28th. After Conley made his last statement Chief Beavers, Lanford and I went to the jail with Conley and saw the Sheriff and he went to Frank's cell. The last time I saw Frank was Saturday, May 3rd. As to whether Mr. Frank refused to see me only through Sheriff Mangum, as to the number of matters I told Conley didn't fit the first time and those I told him didn't fit the last time, I could not name those, that would almost be impossible unless I had the statement clear in my head. I never suggested what to put in or what to substitute or what to change. That came from Conley himself.

THE STATE RESTS

EVIDENCE FOR THE DEFENDANT.

W. M. MATTHEWS, Sworn for the Defendant.

I work for the Georgia Railway & Electric Co. as a motorman. On the 26th day of April I was running on English Avenue. Mary Phagan got on my car at Lindsey St. at 11;50. Our route was from Bellwood to English Avenue, down English Ave. to Kennedy, down Kennedy to Gray, Gray to Jones Ave, Jone Ave. to Marietta, Marietta to Broad, and out Broad St. From Lindsey Street to Broad is about a mioe and a half to two miles. We make frequent stops. We were scheduled to arrive at Marietta and Broad 12;07½. We were on schedule. We stayed on time all day. Our car turned up Broad St. Mary Phagan got off at Hunter and Broad. It takes generally from two and a half [illegible] and Marietta to Broad and Hunter. That is a very congested

street and you must go slow. I was relieved at Broad and Marietta by another motorman, but sat down in the same car one seat behind Mary Phagan. Another little girl was sitting in the seat with her. We got to Broad and Hunter about 12:10. Mary and thee other little girlboth got off and walked to the sidewalk and they wheeled like they were going to turn around on Hunter Street, both of them together. The pencil factory is about a block and a half from where they get off at Hunter and Broad. Nobody got on with Mary at LindseyStreet . There wasn't any little boy with her. The first time I noticed the little girl sitting with Mary was when we left Broad and Marietta Street and I went back into the car and saw this little girl sitting with her. I knowthe little Epps boy. I have seen him riding on my car. He did not get on the car with her at Lindsey Street. I saw Mary's body at the undertaker's. It was the same girl that got on my car.

CROSS EXAMINATION.

I did not twll one of the detectives that we might have been running three or four minutes ahead of schedule thatday. I remember that Mary did not get off the car at Broad and Marietta because there was a street car conductor sitting behind me, and ex-conductor and he had a badge on his coat and I looked at it and it had a little girl's picture and I reached over to where Mary was and said, "Little Girl, here is your picture," and she said, "No, it is not." I don't know who the other little girlwas sitting with her. The other little girlwas dressedsomething like Mary. I didn't pay much attention to their dresses, but they looked sort of alike. Mary's dress wasn't black. It was light colored. I know Epps since this case came up. I could identify him. I never paid much attention to her hat. It

that way.

RE-DIRECT EXAMINATION.

I identified Mary's body Sunday afternoon after the murder at the undertaker's. There was no doubt about her being the same girl. I knew her well by sight. She rode on my car lots.

Re-CROSS EXAMINATION.

I can't tell you whether that is the hat or not she wore.

W. T. HOLLIS, Sworn for the defendant.

I am a street car conductor. On the 26th of April I was on the English Avenue line. We ran on schedule that day. Mary Phagan got on at Lindsey Street at about 11:50. She is the same girl Identified at the undertakers. She had been on my car frequently and I knew her well. No one else got on with her at Lindsey Streer. Epps did not get on with her. I took up her fare on English Ave., several blocks from where she got on. And no one was sitting with her then. I do not recollect Epps getting on the car at all that morning. Don't know whether anybody else afterwards sat with Mary or not. We got to Broad and Marietta seven and a half minutes aftertwelve, schedule time. I was relieved atForsyth and Marietta, Street, where I gottoff. Mary was still on the car when I got off. It takes two and a half minutes to run from Broad and Marietta to Broad and Hunter. I have timed the car again and again since then. I identified the little girl at the undertaker's Sunday afternoon. Didn't notice the color of her clothes.

CROSS EXAMINATION.

Mary rode with us two or three times a week. So did Epps. I don't know where he got off or where he got on. We are not supposed to come in ahead of time. We never come in two or three minutes ahead of time. We are a little late sometimes. I never noticed anybody sitting with Mary.

She was sitting by herself when I got her fare. There wasn't but two or three passengers on the car and I know there wasn't anybody sitting with her. If Epps was on the car I don't recollect it. I don't recall the name of any other passengers except Mary Phagan. As to what attracted my attention to Mary getting on the front end of the car, as a general rule when she would catch our car Mr. Matthews would say to her "You are late today" and sometimes she would come in and remark that she was mad; that she was late today and when she came that morning Mr. Matthews said to her "Are you mad today?" and she said "Yes, I am late." And sort of laughed and came on in the car and sat down. She usually caught our car when she came in the morning. The one due in town at 7:07. I didn't know Mary's name, I just recognized Mary's face as the little girl who traveled with us.

RE-DIRECT EXAMINATION.

I heard of the murder next day. Newspaper reporters asked us to go down and identify the girl. There was no doubt about her being the little girl who was on our car. Oliver Street is the next street to Lindsey. I did not see Epps get on at Oliver Street. It is against the rule of the company to get to the city ahead of time.

RE-CROSS EXAMINATION.

It is not against the rules to get in behind time. Sometimes we might get there a few minutes ahead of time, but hardly ever. We always look at our watches at the main destination, just as Broad and Marietta. We are supposed to do that.

HERBERT G. SCHIFF. Sworn for the defendant.

I am assistant superintendent of the National Benoil Co.; I have been with the company about five years. Part of my duties was to get up data for the financial sheet. I occupied the same

office as Mr. Frank. I took a trip on the road on the first Saturday in January. All of the Company's money except the petty cash was kept over at Montag' Bros. office at the general manager's office, Mr. Sig Montag. All mail of the Company is received at Montag Bros. The men in Mr. Montag's office made only the deposit of money of the Company. Mr. Frank and I handled the petty cash ranging from $25.00 to $50.00. When we wanted money for the pay roll, we would get a check from Mr. Sig Montag who signed for the company. Mr. Frank and I had no authority to sign checks. I would go to the bank and get the money and we would go to work at once filling the pay envelopes. We would always draw the exact amount of the pay roll. Our petty cash amounted to from $25 to $50. We kept that on hand for items like drayage, kerosene, soap, candles. The money for the cash would also come from Mr. Montag's office. The salary of Mr. Frank and myself were paid by check, on the last of the month, or the first of the next month. Mr. Frank's salary was $150 a month and my own $80. Montag Bros. office is about four blocks from the factory. The company's bills were paid from Montag Bros.' office, where all the finances of the company were taken care of. We simply looked after the manufacturing end. The financial sheet which Mr. Frank and I worked on on Saturdays showed how our week terminates, whether at a profit or loss. We had to show what we manufactured, what we packed, the materials that were made to go on the pencils, covering lead, plugs, tips, boxes. We showed our shipments, what our average order jobs amounted to, what we purchased for and the price. Our factory week began on Friday night and went through Thursday night. In making up the financial sheet we would show it as ending on Thursday of every week. We couldn't make it up until Saturday afternoon because our reports very seldom came in before Friday noon and sometimes

Saturday morning and also our pay roll which showed on the financial sheet. These reports and the pay roll were necessary to make up the financial sheet. We paid off at Saturday noon. It has been our fixed custom ever since we have been in existence to make up the financial sheet on Saturday. I help Frank make out the financial sheet by getting up part of the data, getting up a sheet that we term the factory record, the number of pencils packed for the week, getting up the top records; I get the reports from the different foremen and foreladies; I get the slat records from the slat mills, the number of slats delivered to manufacture pencils with, and give him the totals of the pay roll. With the exception of thelast week in July and the first week in August, I missed no time from the factory after June 1st, excepting my trip on the road during January. With that exception I have not missed a single Saturday after the first of June, 1912. I usually leave the factory at 12:30 and return at 2 to 2:15. Frank would leave a little after one and return about three. I do not recall a single Saturday that Frank returned earlier than I did. As soon as Frank would get back he would get to work on his part of the data and he would continue to finish the sheet. We both worked together. The street doors were always open. Offide boy would be in the outer office. Frequently we were interrupted by salesmen calling on us Saturday afternoon. The stenographers came back very seldom on Saturday afternoon. We were liable to be interrupted at any time on Saturday afternoon by people on business. As to who else stayed at the factory on Saturday afternoon, Harry Denham usually, Walter Pride, Holloway, who would stay until 4:30. Newt Lee was the first nightwatchman we ever had. Frank and I usually left the factory at half past five or a quarter to six on Saturdays, we usually left [illegible]

often Mrs. Frank would come up to the office on Saturday. I never saw Conley around the office on Saturday afternoon after two o'clock. We never had any women up in the office. I never saw any there. Thereis not a bed, cot, lounge or sofa anywhere in the bui lding. There is a dirty box with dirty crocus sacks on it in the basement on the Clarke Wooden Ware Company side. It is very filthy and dirty down there. I went on the road on the first Saturday in January, 1913. I got back tothe factory thatday about 2:15, in the afternoon. There were ten or twelve fellows there. Conley was not there. They were all there and told me goodbye, with the exception of two or three who accompanied me to the train, including Mr. Frank. There were no women at the factory. I have never seen Mr. Dalton in the factory in my life. Daisy Hopkins worked on the office floor. She left the factory June 6th, 1912, as appears on the time book. Never saw her in the factory after she quit work. On the first Saturday in January, Frank Remained in the office with me until 5 o'clock to catch my train. I was at the factory last Thanksgiving Day. It was very cold and rainy. It was a holiday at the factory. The office boy and Conley were also there. I ordered Conley to come back that day to clean up the box room with Frank Payne, the office boy. Conley got through about half past ten. I know he did not stay atthe factory until noon. Frank and I were all of the time in the office doing clerical work. Frank left that day at 12 o'clock. We left together. I saw Frank catch his car for home that day. Frank was carrying bundles, for the B'nai B'rith, which was going to have an affair that night. Mr. Frank is president of it. It is a charitable organization. It takes care of orphans and things of that sort.

I paid off the help on Friday, April 25th, from the pay window outside of the office. I remember paying off Helen Ferguson that day. Nobody came up to ask for Mary Phagan's pay. Before any one could get another's envelope, they have tohave a note tothat effect. There was no reason for anyone to go to Mr. Frank to get their pay Friday, April 25, I was at the window paying off employees. We had posters put up all over the factory announcing that Saturday would be a legalholiday and that the factory would be closed. Those who wouldnot call for their pay would frequently come in on the next working day, which in this instance would be Monday. No one could really know whether anyone was coming in for their pay on Saturday or not. Helen Ferguson did not ask for Mary Phagan's pay Friday, April 25th. Mr. Frank and I left the factory between six and six;thirty that day. I was supposed to get up the pencil contracts for the week on Friday. It was necessary to get this up in order to complete the financial sheets. I did not get them up on Friday, because I had to pay off on Friday, and as the week only closed on Thursday night, we had allwe could do to figure out the pay roll and get the money before the bank closed at 2 o'clock on Friday. That threw extra work on Mr. Frank in getting up the financial on Saturday. I intended to come back to the factory on Saturday morning, but overslept myself. Mr. Frank called me by telephone twice on Saturday morning. My maid answered the telephone. That picture (State's Ex. "A") shows Mr. Frank's office, inner office, to be bigger than the outer office. As a matter of fact the outer office is twice as large as the inner office. The picture shows an inaccuracy as to the relative position of the elevator shaft from the outer wallof Mr. Frank's office. It is directly opposite the [illegible]

shows it below the time clock nearly to where the staircase is. The door entering into the Clarke Wooden Ware place was open two or three days after the murder. The door was previously locked. There is a hole back there through which waste is thrown down. It is an open hole. There is no lid to it. It is big enough for the body of a girl of the size of Mary Phagan to go through. If a body was thrown down it, it would roll down and stop on the platform. Mr. Frank did not know that I had not completed the data sheet (Defendant's Ex. "3") for him before Saturday morning. It usually took Mr. Frank and me about three hours to finish the financial sheet. This is the financial sheet that Mr. Frank made up on Saturday afternoon, April 26th (Defendant's Ex. "2"). It is in his handwriting. I didn't see it at the factory on Friday. First saw it the following week when I got it back from the General Manager. Ir is accurately prepared from the calculations left by me on the datqa sheets. I haven't found any mistakes in it. The first Items on it are standing items and do not require any calculation, if you know it. Those are the items headed "direct, indirect, rent, light, heat, water, power, insurance, sales department, repair sundries, Mach. Shop." Under the heading "Material Costs", the first figure 2765½ represents the number of gross that we manufactured for that week. That is the data I furnished him through Wednesday night. I left it there on his desk on Friday night. Mr. Frank's calculation corresponds with the data that I left there. He arrived at the same figure, 2765½, that I did. To get that figure he had to enter all his packing reports for Thursday containing two or three pages, each of that containing [illegible] or 40 items.

He has to put that down under the number of pencils that shows on this sheet. He has to calculate and have a separate report as to each kind of pencil and then add them up. We manufacture over a hundred kind of pencils. That week we dealt ~~xk~~ with about thirty-five different kinds. To do this you have to add, multiply, classify and separate each pencil into a different class. The next item appearing on the financialsheet is "slats", 2719½. In calculating that he had to calculate the number of gross of slats used, of the product of the pencils, which should check up with the number of gross manufactured. He would have to go through the packing report for that. The next item is "rubber" 720 gross at 6½ cents, 667½ at 9~~x~~, ~~xxxx~~ 706½ gross at 14 cents". That means the rubber plug that goes into the pencil tips. The cheaper pencil takes a cheap p lug and the higher grade pencil takes a higher grade plug. That shows how many we use and the kind of plugs;to arrive at that figure he had to go all through the grade of pencils for the entire week, and separate the different ones. That is white a calculation. Next item is "tips", the different kind of tips that are used on the pencil to hold the plug. He would have to go through the grade for the entire week, just like he did for the rubber. The next item is "Lead" which he had to figure out the same way. Different class pencils take different class lead. The next item is"supplies", that is a fixed thing and involves no calculation. The next thing is "boxes". We have some pencils that are packed in boxes and some thatare not packed in boxes, and he had to ascertain what pencils were packed in boxes, and in gross bexes, and in half gross boxes, multiply them, get them all down together under the head of "gross" to know how many boxes we used. Next item is"assortment boxes". He has to sort out his packing reports to know the

number had for that week. The next item "wrappers" requires calculation because every dozen pencils takes a wrapper. People sometimes want them packed in tissue paper, and he has to know which pencils are packed. He has got to go through all the pencils to determine which took wrappers and which did not. Our pencil production averaged 2500 to 3000 gross per week. A gross is 144. The next item is"skeletons". Skeleton is a card board with a little place in it where six pencils go on one side and six on the other and the wrapper goes around it. The assortment boxes don't take skeletons, the chaaper pencils do. He had to know the details of the productions of pencils to determine how manyskeletons were used, just like he did the wrappers. The next item that required figures is "lead deliveries". We had two other places where we get materials from, slat mills at Oakland City and lead mills at Bell and Decatur Street. Mr. Frank kept the pay roll for bell street, and the lead deliveries for Bell Street. He had to get up for the next item the slats that were cheap and good. Then he had to calculate all this stuff on down. Next on this big sheet we have the number of every pencil manufactured. We only use the numbers that are packed that week. When he gets through he adds the total of the productions for that week of that department and he comes over here and puts it down and multiplies it by the price, the selling price, and besides these items we have pencils that are bad. For instance, we have some of these jobs, if they have plugs in them that are bad, he has to figure the number of plugs and the number of tips that were in his job and put in all his jobs and come over there and put down what his jobs amount to. That requires quite a good deal of calculating. The handwriting on the financialof April 26th, is in Mr. Frank's usual and average handwriting

been over carefully the calculations in it and it represents accurately the operations of the factory for that week. We did not do any of the work on that sheet on Friday. I think it wouldtake about three hours to go throughthe calculations and complete that sheet. That was our average time. There is no difference in the handwriting of Mr. Frank in the financial sheet of April 26th, from that of the week previous. It is just the same. The financial sheets are all kept in this book here (Defendant's Ex. "(9). The one ending May 30th, 1912, is in Mr. Frank's handwriting. It was made on the Saturday following that date. None of these financialreports could be made in less time than two hours and a half. All these financial sheets beginning with May 30th, 1912, down to date are all in Mr. Frank's handwriting. They were all done on Saturday afternoons. From May 30th, 1912, up to date, Mr. Frank did not miss making a single financial sheet on Saturday afternoon. These are the original financial sheets (Defendant's Ex. "9"). They are kept in our safe at the factory. This little cash book (Defendant's Ex. "10") shows the petty cash checks we receive and what we spend it for, little items like kerosene, things like that. The week of April 26th, we used $56.53 of the $96.48 we had, leaving $40.00 on hand. The next week we had left on hand $34.54. That is what is marked to balance, but that does not always mean that we have that much money on hand. It means that we have accounted for it. We may have lent it out, in advances to men. We put tickets in the cash drawer when we do that and we count it as actual cash. On that Saturday, we couldn't have over $30 or $35 in the drawer. Yes, I am acquainted with Joel Hunter, the accountant, with all the data that goes in the financial sheet and explained it to him [illegible] Mr. Caldwell. I gave them all the data nec-

essary to make up the sheet. The sheet here headed "Comparison 191201913" (Defendant's Ex. "11") is made up by Mr. Frank to show the difference between one week of this year and the same week of last year and in making that up he has to take the financial sheet that he made this year and turn to the financial sheet that he made last year for the same week and compare them. This is the comparison sheet he made on Saturday. It is dated April 24th, 1913. (Defendant's Ex. "11"). The requisition and house order book (Defendant's Ex. "12") also show Mr. Frank's handwriting on April 26th. Also the last two lines of these pencil sheets (Deft.'s Ex. "7") are in Mr. Frank's handwriting. I made up the pencil sheets through Wednesday, but he had to make it up after Thursday. He had to put in all the items from the packing room for Thursday, enter them under the numbers on these other sheets and then add every item for the whole week. Mr. Frank had to fill in April 24th on all three papers and then get in all those totals in on that. All of the last two lines are in his handwriting. He added up all this report for Thursday. He went through the report to figure them up, that was usually my work. It would take him about fifteen, twenty or twenty-five minutes. The house order book shows what day an order is received, the firm it is received from, where their place of business and what date it is shipped. As to what work is in this house order book (Deft's Ex. 12) that Mr. Frank did on Saturday, there is work in there in Mr. Frank's handwriting that wasn't in there when I left the night of April 25th. Beginning with item 7187 on page 56. "Received from F. W. Woolworth, store 57, St. Joseph, Mo. came in on the 16th, 17th, to be shipped at once." That is in Mr. Frank's handwriting, he entered that order. He would have to have that before he could enter in that book. The

The next item he entered was "House order 7188,F.W.WOOLWORTH,Store 68, Terre Haute Ind." That was to be filed at once. He would send an acknowledgement card for every order we received. If the order wasn't understood, he would write. The next item he entered was "House order 7189 Woolworth Store 53,Logansport,Ind." to be shipped at once, received on 4-26-13". He figured that order out and entered it. The next order is"House order 7190,store 585 DeKalb, Ill. received 4-26-13, ship at once". The next order id "House order 7191,store 35 Wilkesbarre, Pa. received, 4-26-13, ship at once." Next order "House order,7192,store 312, Saratoga Springs, N.Y. received 4-26-13 to be shipped at once." The next order is 7193, send by mail to Unites Service, Sioux 5 & 10 cent Store Souix, Mich.received 4-26-13, to be shipped August 1st," Next order id"House ~~xxdxx~~ order 7194 DuBuque, Iowa,4-26-13 , at once" Next ~~xxdxx~~ is"House order 7195, Montag Bros. Atlanta, Ga. received 4126113, to be shipped at once."Next id House order7196, John Leellie, to John Ferguson Comapny, Chicago,Ill.,4-26-13, at once."
Next is "House order 7197,R.E.Kendall Company,Cincinnati,Ohio, received 4-26-13, ship at once". All of these eleven orders are in Mr.Frank's handwriting and he entered them that day. That is the regular book that we keep those orders in (Defendant's Exhibit 13). I have looked at the original orders and compared them with Mr. Frank's entry in the book and they are correct. I have here the original orders from which Mr.Frank made his entries, with the exception of one, which I can't find. They were in Mr.Dorsey's possession for some time. These are the 11 original orders(Defendants Exhibit 14,15,16,17,18,19,20,21,22,23,24) After Frank's enters the orders in the house order book, he transcribed them to these requisition sheets. In other words, in each order that he receives, he enters the order in the book, then makes out one of these requisition sheets and then makes the acknowledgment of the order to the party ordering the goods. All of these eleven requistion sheets

(Defendant's exhibits 25,26,27,28,29,30,31,32,33,34,35) are in Mr. Frank's handwriting and are O.K. by me when I check it,which means that we ship the goods. All of the goods called for by these orders have been shipped out by me after being O.K'd with the exception of the order of R.E. Kindell and Company 7197(Defendant's exhibit 24), which was cancelled by letter. None of these orders were at the pencil company factory when I left there Friday night,and they were there when I got back on Monday. The work of looking over the orders and intering them in the order book and making out the requisition has nothing to do with making out the financial sheet. It is entirely independent of it. The financial sheet shows the factory's operation from Friday morning,through Thursday night. These orders go into the next weeks business. I saw Mr.Frank on Sunday after the murder. There was no scratch,mark or bruise on him. Mr.Frank is a man of extremely temperament. If any thing went wrong about the factory,he would go all to pieces and get nervous. It was not unusual for Mr.Frank to get nervous. When a young child was run over by a street car,he came back as pale as death,and I had to give him a dose of ammonia, Hr was no good for the rest of the day. I know Jim Conley's character,for truth and veracity it is bad. I would not believe him on oath. The paper that those notes found by the body were written on can be found all over the plant. They get sewpt to the basement into the trash. I heard the telephone conversation between Mr.Frank and Mr.Ursanbach about the ball game. I heard Mr.Frank say " Yes Charles I will go if I can". Sitting in Mr.Frank's desk in the inner office you can see about half of the dial of clock # 3. You cannot see the steps leading down to the first floor. If the safe door is open in the center office you can't see anything at all. It would have to be a pretty tall man to see over it. It would be impossible for a girl of Monteen Stovers height to see over it. The safe door is always wide open while we are in the factory. I went through the safe Monday,Tuesday and Wednesday. I didn't

find any mesh bag or pocket book. I was with Mr. Frank constantly while he was at the factory on the Tuesday morning after the murder. He did not speak to the negro Conley that day. Monday we tried to open up the factory, but every body was so excited that we couldnt do any work. The girls were standing around, crying. We had to suspend. As I went out of the shipping room that morning,I saw Conley standing in the back of the room. I said" what are you doing here?" He:says: "I am scared to go out,I would give a million dollars if I was a white man." It is very dark on the ground floor around the elevator. I have never known the doors to Mr. Frank's inner or outer office to be locked. Even if they were,you can see right through them,part of the door being glass. Anybody could look through them and see what is going on in the office. The door to the elevator can be easily lifted by anyone and anybody one can be pushed down the elevator shaft. The motor to the elevator is on the office floor, and the wheels are on the top floor. When you start up there is a noise. You can always hear the jerk when the rope is pulled, and when it stops there is a noise and when it hits the basement floor, there is a thud. The motor also makes a distinct humming noise. The motor box is not kept locked. I have gotte n after Jim Conley many times about not registering. We have docked him for not doing it. I have noticed blood spots on the floors of the factory. Whenever one gets his fingers hurt,he has to come to the office to get it tied up. People have gotten hurt in the metal room and in coming to the office would walk by the ladies closet,through those doors. The sopts that Barrett pointed out in the regular path where a man would come to the office if he were injured. There were four or five strands of hair that Barrett discovered. I saw them. Could not possibly tell what color it was. The metal room floor has not been washed since I have been there.

CROSS EXAMINATION. I knew on Monday that Mrs. White claimed she saw a negro there. Frank telephoned me three or four times on Monday to get the Pinkerton's. He was at home. I was at the factory.When

the detectives got to the factory, Frank was at the Station House. He was there nearly all morning. He phoned me first about twelve o'clock, and then again about twelve thirty. He wanted me to see if we could not injustice to all the employees try to sift this thing down, and he suggested getting the Pinkertons. He phoned again near one o'clock. Mr.Frank sppke about his nervousness. He didn't talk a great deal about it. He may have spoken to me onee or twiee about it. I think one time he explained to me how terrible the girl looked and the other time that they rushed him to the undertakers in a dark room and threw on the light. He said he was awfully shaken up. As to what Mr.Frank said when they telephoned him about the murder, he asked what was the matter, had there been a fire at the factory. Another reason he was nervous he said, he hadn't had any breakfast, he wanted a cup of coffee. We had been without a stenographer quite a while. The work had accumulated to some extent. As to what work there was in the factory for Mr.Frank to do Saturday except the financial sheet, he enetered the orders, made requisitions. I do not know that Miss Hall entered all those orders. I know she took dictation. That is all I know about it. The first time I saw those orders entered on the order book, was on Monday or Tuesday. It takes about an hour or an hour and a quarter to enter those orders on the book. It is true that I testified before the coroner, that it wouldn't take over half an hour to enter the orders. It takes an hour and and a half to do all of the work of transcribing them that you pointed out to me. Acknowledgments are usualy made by the person who transcribes the orders and enters them on the requisition. If Mr.Frank didn't make acknowledgments, that would not make a difference of over five or ten minutes in time. I said it would take an hour and a half to do all of the work lying on the table, requisition and all, transcribe them and acknowledge them. As to what that work was, beginning with orders 7187 on the 26th, there are eleven orders, going down through 7197. None of that was done on Friday because the orders wern't there.

when I left Friday night. I left Friday night at half past six. I didn't go to the factory on Saturday morning. I have never timed Mr.Frank entering those orders. I said I guessed it would take him thirty minutes to actually enter them. After entering them he mu-st transcribe and acknowledge them. They initials "H.H." on these orders(Defendant's exhibits 14,15,16,17,18,19,20,21,22,23,24). means Miss Hattie Hall, the stenographer. "H.G.S." on these requisitions (Defendant'e exhibit 25,to 35 inclusive) are my initials,mean that I checked the order and O.K.'d it and its gone. Miss Hattie Hall wrote the letters acknowledging the orders. I know that because the latter has the letter" H.H." dictated by ". We haven't any regular way of acknowledging . Some orders are acknowledged before they are ever touched. There is no certain first step. It is not necessary that they should be entered on the book first. One step doesn't hinge on the other. If Hattie Hall had anything to do with writing these things,it was done Saturday morning. The ordess must also be transcribed from the order th the requisition sheet. The average sheet was the only sheet that had not been worked on Friday that I found had been worked on when I got back there. It had not been touched on Friday,and I had not given any data for it when I left. They data I had to get up for it was the slat production the packing room production,the tips,I get that from this packing room report(Defendant's exhibit 4 A) The handwriting is that of Miss Eula May Flowers,the forelady. When I received that report, I had to accumulate all the data,penciled it,and transferred it to the pencil sheets here(Defendant's Exhibit 7) These three sheets are the only thing connected with the packing room for the week of April 24. I wrote the figures Wednesday night and Mr.Frank did it Thursday. Mr. Frank had to add two lines to the sheet. He could get those from Miss Flowers report just as well as I could. The figures on the bottom of the page are his. All the writing on this sheet is mine except the last two lines at the bottom,which are his (Defendant's Exhibit 7). On that sheet,yes,there are just eleven figures,

but you got three sheets to get them from,one line on all three sheets and the total,making six lines altogether. It is not easy to say how long that would take. It is merely looking at those things and putting them down,you have got to over it.,and get the different clases of goods that we pack and take it and put it under the head of the specialty,that is the head of the clases of goods manufactured that week. You must have the slat record. I havent got the slat record here. It certainly is different from this. It comes from the cedar mill. The item on the financial sheet (Defendant's Exhibit 3).that he got from the slat receod is the item under "Material cost",- "Slats 2719 1/2 gross at 23¢". That is all he would have to get on the financial sheet with reference to slats. That wouldn't take anymore time than taking these daily reports and putting them on here. He also had to get the lead deliveries from the lead plant and the tip deliveries from the tip plant. Our numbers run on the sheet like this 10 X,20 X,etc. Our two 10X pencils,for instance, manufactered for the Cadilac Motor Company,if they want a pencil with their name on it and ours not on it,we call it the 10X special, of 5 10 X Cadilac special, We have to go down through each number that has been sold and get the make of each style of pencil and they have to go in the right square,covering the right shape and the right number of gross. If he didn't he wouldn't balance with his packing reports and the whole sheet would be incorrect. These papers here and the tip plant and the slat record and the lead record and the packing are all the papers I know were not worked on Friday night and which I found at the factory when I got there Monday. Frank needs those four reports to make up his financial. Doing that work and entering those eleven orders is all that I know Frank had todo on April 26th. I didn't see them done. I say I found them done the next week. It was certainly done between Friday night and Monday morning . I didn't see the fibancial sheet on Monday. The slat record comes from slat mills and tip record from the tip plant. I compiled the [illegible] at our plant. If Frank had started to work at

153 eight-thirty, I think he could have finished a greater part of this work by ten-thirty, if he had worked continuously.

It is true that he could have done all of the work in two hours and a half. II didn't hear him say that he could have done it in an hous and a half. The work that I have just been over and the entries in the book and the letters that he dictitated to the stenographer is the sum total of all the work that I have seen done on the books in the office on April 26th. Mr. Frank and I were not paid off on the 25th, or 26th, In addition to the work I have gone over, Mr. Frank had to balance the cash. This is his writing in the cash book. (Defendant's exhibit 40) and all those figures were made that day. It dossen't mean that 15¢ worth of kerosene was purchased that day, because the entry was not dated that day, it means that the figures were put on there that day, for the reason that the week hix is not closed. until that is added to the cash. The date this kerosene was purchased, April 21st, is found in the little receipt book(Defendant's exhibit 10). It was purchased on the 21st, as shown in the receipt book, but was not entered in the cash book until the 26th, We don't put our items in the cash book the minute they are purchased. We put the total of each item under sub-heads. If we pay drayage $2.00 on Tuesday, $2.00 on Thursday and $2.00 on Saturday, there would not be three entries in the cash book, but they would be under one head "Drayage $ 6.00", and every thing else the same way. When we advance a man money it is put down on a slip and entered in an envelope, called "Loan". We don't take a receipt for it. I can show that Frank gave $ 2.00 to Arthur White and it was deducted. I made the entry in the time book the next week and deducted it the following Saturday. We don't enter it on the cash book. This average sheet (Defendant's exhibit 5) is all in Mr. Frank's handwriting. It begins from January 10, 1911. As a rule Mr. Frank put on the financial sheet the average to show General Manager how the average of our orders have run. I don't see it on the financial for that week. It is no rule. I said he usually does it. It dosen't affect the financial sheet however, if it is not on there. It dosen't keep the financial sheet from being completed

I say he did work on the average sheet on Saturday because those orders came in that day. I know they could not have been entered the Thursday before and that they were entered in fact Saturday because I had gone over the orders and find that they average the same thing that he has got on the average sheet. None of the orders came in the factory before Saturday morning, because they were not there Friday night when I left. I am sure of that. I have never known Mr. Frank to leave there on a Saturday with the financial sheet not ready. He would not go to a ball game unless he had his work up. I heard him say on Friday afternoon that he was going to try to go to the ball game. We left there Friday night together. He He didn't go back that night. I said at the Coroners inquest that if the data had been gotten up for him it would take him an hour and and a half to two hours. I don't remember saying that it would take only two hours and a half for both the data and the financial sheet. I meant two hours and a half without the data. I say it would have taken from two and a half hours to three hours to have gotten it all up. I am not an expert accountant, and I base my opinion on the reason that I have gone back at the same time and have sat down with him while he was working and seen him when he was finished. He couldn't hurry over the work, and get it correct. I think he could get it up quicker than I could. I am postive that I said at the Coroners inquest that he could get it up a half an hour quicker than I. I may have said so, that was only an estimate. I have never made up a financial sheet. My estimate of the time referred to Frank doing it. I couldn't tell how long it would take to balance that cash. I said at the Coroners inquest between an hour and an hour and a half. It all depends on whether you balance or not. We keep our little change in nickles, dimes, quarters and halfes, and you have to take the money out of the sack, stack it up and count it. As to how I remember where I was last Thanksgiving Day, because I was going to Athens to see the Georgia Foot Ball Game. I remember it snowed and I didn; t go. I told Conley and the office boy to come to be at the factory. The second reasom I remember is because of the

B'nai B'rith affair. Which Mr.Frank went to and I helped him carry his packages to the car. As to my remembering every Saturday that I have been there for six months previous,I have never lost a day from the factory since I hace been there with the exception of my vacatuson. I was with Mr.Frank until half past twelve on Thanksgiving Day , when I left him at the corner of Mitchell and Alabama, where he cought a Washington Street car. I don't know what he did that afternoon. I do know that I remained at the factory every Saturday afternoon since I have been there because I have not lost a day. I paid off Friday,April 25th. I remember Helen Fugerson coming to the window and I paid her. I can tell you the names of many more that I paid off that afternoon. (Witness gives names of eight or ten more he claims to have paid off). Mr. Frank and Mr.Holloway were there at the time. It is very dark underneath the chute near the Clarke Woodenware Company place, we kept shellac in front of the door there. It is the door to the left. We did not have boxes piled around there after this murder occured. If a body had been shot down there,it would have been 20 or 25 feet from that door. We go down there every day or so to get shellac,you don't have to pass by the opening under this chute. I never noticed any indication that anybody had walked around the chute. I saw the place in the metal department, where they said there was blood. It looked like blood from a finger being cut. It looked like haskoline had been splashed all over the metal department. There was nothing different about that particular spot from anyothers, except that it was red. It look like it had been swept over. As to those steps by the chute I don't know what they were nailed up immediately after the murder. Three days after I came up those stpes. I don't remember whether it was before or after the insurance people made us clean up. I know I was at the factory on Saturdays and Holidays after twelve o' clock. I changed the clock at times if I find that it is not right. We don't run it five minutes ahaed of time. Every time I look at it it is on time. We do not have to regulate it often. We regulate

it by the whistle in back of us every day at twelve o'clock. We don't set it every time we hear the whistle though. We have had had unreliable people at the factory. We give them a trial . I knew that Conley was unreliable a good while ago. Found it out the first time I ever spoke to him. When we found that we couldn't trust him we took him off of the elevator. Mr. Darley and I did it. We didn't take it up with Frank. Girls in the factory have told me about his worthlessness. Miss Carson and others have told me he tried to borrow money and slipp off. She complained to me several times about it, that he was trifling and didn't clean up her department, that he didn't move the pencils, that he sprinkled on top of the pencils, that he tried to borrow money. The negroes would come to me and told me that he wouldn't pay his debts and slip off. I don't know whether I ever took these complaints to Mr. Frank or not. I was not under Mr. Frank . I had authority to fire him, but I didn't do it, because in a factory like that it is hard to get a negro who knows something about it. He was in the ching-gang two or three times, once he worked on Forsyth St. In front of the building, and then women would come up to me and try to get money to get him out, two or three times. That has happened since he has been working at the factory. I Know that he has been in the ching-gang once, when I saw him working in front of the factory. The times was when women came up there and tried to get money to get him out. I have seen these books scattered all over the factory, ~~xxx~~ whole books and parts of books. I have seen them since this murder. Both before and after. I have seen sheets sometimes, I knew that Jim could write. I have given him and the other negroes tablets like this(State's Exhibit #). They are kept every where in the factory. They would go down in the basement and write. I did not talk to Frank on Monday or Tuesday about Jim Conley's peculiar conduct after the murder. I talked to Darley

REDIRECT EXAMINATION. When I stated that it took two and a half hours to three hours to make up the financial sheet, I meant without any interuptions. We have quite a few interuptions on Saturdays, salesmen drop in, draymen and people come in, for their envelopes after we have paid off. When I said to Mr. Dorsey that he might do the work from 8.30 to 10.30, I had reference purely to the financial sheet. Making the entries in the house order book, requisitions and dictating the correspondence, I did not include. The correspondence and the entries in the requisition book is usually done in the morning. We usually go to Montag Bros. about eight-thirty, get the mail, come right back, acknowledge the orders and answer the correspondence. I have never known Mr. Frank to take up the financial sheet before the afternoon. After he finished his financial, Mr. Frank would usually make two copies of the result of it, and send one of them to his uncle, who is a stock holder and the other to Mr. Pappenheimer, who is the president. My estimate of the time was two and a half hours for the financial sheet, and and one and a half hours for the other work. Mr. Dorsey's picture (State's Exhibit A). shows nothing in the Clarke Wooden Ware Company except the front of it. It has left out every scuttle hole, and toilet and every thing there. It fails to show the door that enters into the partition to the basement. Hasn't got either one of these two front doors. Mr. Frank's wife frequently did some shorthand work for him on Saturday afternoons. I have seen her there often when we were behind in our work. The haskoline did not hide the red spots at all. You couldn't tell whether it was on top or on bottom of the red. It is nothing unusual for the white stuff to be spilled all over the metal room. I did not know that Conley was denying that he could write in the station house, for quite a while. The Pinkerton men came over to the factory to find out if he could. I looked all over the and found a card where he had signed a sig-

nature for a jeweler for a watch. The detectives found the information by coming to the factory. The negroes allways ate in the basement. Conley was familiar with the basement. Mr. Dorsey subpoenaed me to his office, he suppoenaed some of the others. I think he phoned to me. Empty sacks are usually moved a few hours after they are taken off the cotten.

RE CORSS EXAMINATION. I had no objection to coming to your (Mr. Dorsey) office. I offered to assist you in any way I could. No, it was not Mr. Frank's ou stom to make an engagement Friday for Saturday evening and then go off and leave the financial sheet untouched. The pencil factory id three of four blocks from Montag's. Some of them are short blocks. Guess it takes three to five minutes to go over there. I have never times myself. The first time on Monday I observed the peculiar behavier of Conley was between half past seven or eight o'clock, he was sitting in dressing room on a box. It was after that I went with detective Starnes to try to locate Gantt and arrest him. Frank never went to baseball games or matinees on Saturday. The only pictures that are hanging on the walls of Mr. Frank's office, is a calendar that Truitt ans Sons give away. No, I don't know whether the detectives found out else where that Conley could write. I gave them the information when they came to the factory. It was on Monday morning that I saw the haskoline add the red spots. If the blinds had been closed it would have been some darker, not a big difference.

RE DIRECT EXAMINATION. I have never seen Mr. Frank talk to Mary Phagan.

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. .JOEL C. HUNTER. Sworn for the defendant.

I am a public accountant, engaged in the profession ten or fifteen years. I have examined the financial sheet said to be made by Leo M. Frank. I examined a copy and then checked it against the original. In order to find out how long it would take a person to make out these reports, I went through the calculations. I did not make out the sheets. I verified the extensions and calculations on the financial sheet('Defendant's exhibit 2). I found them correct within a decimal. There is one item a decimal is incorrect. That was immaterial, merely an error in the calculation. In order to find out how long it would take that report to be made up, I made an examination, line by line, item for item. I figured an approximate time it would take to make the various entries if they had all of the data immediately available, and how long if it was not immediately available. I put these down in two separate columns and then struck an average. In my opinion the quickest possible time to make out this report, balance the cash, make out the comparative statements and the copies of which they furnished me, I figured 150 minutes. I don't think that could have been done in that time except by someone having experience in it and knowing how to set up these facts and figures. This would not allow for checking the figures. In my opinion, it would take from three to three and a half hours to make out this report, balance th e cash, make out the two copies and the comparison of 1912 and 1913. (Witness then details time it would take in his opinion for each particular item that has been calculated and entered and how he figured it.) In my opinion it would take a pretty swift man three and a half hours.

CROSS EXAMINATION . A man's familiarity with a special class of work will aid materially in making it up. If he had had to get up the information which was furnished me it would take him a good deal longer than it did me, for the information was already furnished me. I have allowed for his experience and familiarity with the business, in the way of saving time, in making my

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estimate. I have tried to make my figures sufficiently conservative to make allowance for a man in charge of the work. I have tried to show it done in the quickest possible time. I think it will be wonderful to make it in less ~~time~~ than that. I think a man who could make it out and verify it as he went along, it would take the whole afternoon.

C. E. POLLARD. Sworn for the defendant.

I am an expert accountant. I was called into this matter for the purpose of seeing the length of time it would take to gather these figures and get the result on the financial sheet and other papers that were furnished me. I studied ~~each sheet~~ and when I was sure of what the result would be I would lay that sheet down and make a copy of it. I would take time myself for each operation. There was a discrepancy of one and one half gross on the factory records in the figures, out of 2765 1/2 gross, (Def's ex. 2.) It was an immaterial error. The minimum time that I could do that work in I found to be three hours and 11 minutes, that was as quick as I could do it. If I had been interrupted in my work of course it would have taken me longer. I have been an expert accountant for 15 or 16 years. The mistake that I found occured on the Saturday ~~before~~ of the week before. It was not Frank's mistake, but somebody else compiled the figures for that week. There is another trifling mistake under the head of "value of products, pencils packed" that did not figure the same as mine. Those are the only two mistakes I found on the whole financial sheet, - a mistake of 50 ¢ and a gross and a half of pencils

CROSS EXAMINATION. In making my experiment of how long it would take, I was furnished with all my data. I didn't have to get up any of the data. I am considered rapid in my work. The mistake of one and a half gross occured on April 18th and 19th. I don't know whose mistake it was. Anybody can work on his books with a great deal more ease than an outsider can. The mistake I mentioned did not make the other calculations wrong, the other calculations were all right. The mistake grew out of just one multiplication. In multiplying 791 gross at 50.1 cents, Frank made the

total $396.75, instead of $386.29.

RE-DIRECT EXAMINATION. In making out this sheet Mr. Frank had to make about 40 multiplications, 160 additions. The mistake is not a serious one.

HERBERT G. SCHIFF, Recalled for cross examination.

The books show that $4 was loaned to Arthur White. I made the entry in the book. The $2. was for what Mr. Frank loaned him that day and $2.00 loanded him the middle of next week.. As to where the entry is that Mr.Frank lent Arthur White $2. these slips are not kept after we take it off. After the payroll is made we destroy those. The books show that this $2. was added to the other $2. There was approximately $1100. paid off on Friday on the pay roll. There was about 5 or 6 envelopes, left over, not called for. The numbers go on different places on the envelopes. The clocks we have now are the same we had when Gantt was there. Whenever there was any trouble we phoned for a man to look after the clock.

RE-DIRECT EXAMINATION. Whenever accidents would happen in the factory we would have the person come to the office, to the outer office, where we would bandage their hands with the few medical supplies we keep there. Then we make a report to the insurance company as to the cause of the accident and any witnesses. We always found the clocks kept good time.

MISS HATTIE HALL, Sworn for the Defendant.

I am a stenographer for the National Pencil Company. I do most of the work in the office of Montag Bros. Whenever it is necessary I go down to the National Pencil factory and do work there. I saw Mr.Frank about ten o'clock of the morning of April 26th at Montag Bros. when he came over there that morning. He came in Mr. Sig Montag's office, where I was taking dictation and I told him that I didn't know whether I would be able to go over there that morning or not, as Mr. Montag was giving me letters and Mr.Frank said: "Well, come if you possibly can". He had previously asked me over the telephone to [illegible] factory.

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That was about half an hour before he came over to Montag Bros. I had called him up to get a duplicate bill of lading and in the course of the conversation, I asked him if he would need me over there that morning, on account of his having an inexperienced stenographer over there, I had been going over there all during the month of April on that account. He said "Please come over I have some work for you to do". It was 20 or 30 minutes after that that he came over to Montags. When he came in I told him that I was afraid I couldn't go over on account of the work I had to do at Montags, but Mr. Montag finished his dictation in a few minutes, and I then told Mr. Frank that I would have time to come over there and that I would be over later. I started over to the factory between 10:30 and 11. I went alone. It takes about five minutes to get over there and I reached there before eleven o'clock. I don't know whether Mr.Frank was there when I got there xxxxx. I waited in the outer office a few minutes before I started to work. Ixxxxxxxxxxxxx I went in the inner office to get the orders to acknowledge for Mr. Frank. I acknowledged them in the outer office. I do the typewriting in the outer office. These are the 11 orders (defendant's exhibits 11 to 24 inclusive) that Mr. Frank handed me and I acknowledged. You notice my initials on them "H.H." I put on there "Acknowledged, April 26, by H.H." Mr.Frank got the orders when he went over to Montags Bros. and brought them back with him. The acknowledgments are the first step, in that case.. Several people came in while we were working, two men, one whose son worked there came in and spoke to Mr. Frank about the boy's being in some trouble in the police court. They went into the inner office to talk to him and he came out to the outer office with them. Miss Corinthia Hall and Mrs. White also came in there in Mr.Frank's office and I talked with him. During this time Mr.Frank was not doing any work on the financial sheet. I find in this book (defendant's exhibit 12) all of the eleven orders which I acknowledged that morning, one order seems to be missing, I just find a requisition sheet for that. I did not enter those orders on the book. It looks like Mr.Frank's handwriting. I did not write any of these.

.requisition sheets. The entering of the requisition was done after I acknowledged the orders, because when they enter them the house order number is put on them when they are put in the book and there was no house orders on them when I acknowledged them. Therefore, it had to be done afterwards. The requisition sheets are not made out until they are entered on the house order book and then acknowledged and then the requisition sheets are made. These eight letters (defendant's exhibit 8) were dictated to me Saturday morning by Mr. Frank and I typewrote them there in the outer office. After finishing them I took them in the inner office to him. I did not file these catbon copies, but left them with Mr.Frank. Throughout the time that I was there that morning with Mr.Frank he d d no work on the financial sheet. As i was ready to leave the nnon whistlex was blowing. At that time I was in the outer office. I went downstairs, and remembered that I had left my umbrella, went back, got my umbrella and started out. When I pushed the clock it was 2 minutes past 12. I did not see any little girl come along about that time.

CROSS EXAMINATION. The Stenographer the pencil company had was inexperienced and did only about one third of the work and that's the reason I had to do the other. I was getting $12.50 a week on April 26. I am now getting $15. When I was first employed they said they would give me a raise on August 1st. I insisted that I be raised on July 1st, but they wouldn't give it until August 1st. It was I that called Mr.Frank over the telephone. I did not insist on going over there. He insisted on my coming. The acknowledgments consisted of stamping the orders with a number, putting the dates down there and acknowledging them by post cards sent to the people. Mr. Frank did not leave Montags with me. He left before I did. He didn't know how long it was going to take me to write those letters. Mr. Montag hadn't finished dictating to me when I talked to him, so he did not wait. While I was there in the office, two men and three women came in. The ladies came after the office boy had left and he said he left about 11:30. The men were in the inner office with him about five or ten minu[illegible] office. I started to work type-

.writing about two minutes after he finished dictating the letters. I don't know how long it took me to write them, I am not a very rapid typist. During the time I was writing, Mr.Frank was in the inside office, except when he came out to talk to Mrs. White and came to the door with those men. After typing them, I took them into him to sign. He folded the letters and put them in the envelopes himself. He did not ask me to stay until he looked over the letters. As to what else there was to be done that day, from the looks of the papers on his desk he had a good many to dispose of. He went through them as he was dictating to me, and there were a good many that he had to get rid of. I was over at the factory the previous Saturday morning. He was not working on the financial sheet. I got up for him the number of gross deliveries and the price and made an average charge of how much each gross would cost. That was a part of the data necessary for the financial sheet. When I testified before the Coroner, I thought that was the financial sheet itself, because I had never seen a financial sheet before. I know now that it was the average sheet. I transferred some of those things to the average sheet. I never did see the financial sheet. Mr. Montag gets it. I did not help Mr.Frank on the financial sheet the previous Saturday. It was the average sheet I helped him on. I discovered my error as to this being the average sheet and not the financial sheet soon after the coroner's inquest. I know that Mr.Frank was not working on the financial sheet on the Saturday morning previous to the 26th. He was busy with something else altogether. He simply gave me that data to work on. I did not identify the financial sheet at the Coroner's inquest, I didn't even know it. I was not in Mr.Frank's inner office on April 26, excepting when I got the orders from him. When I told the Coroner's jury, if I did tell them that, I didn't remember being in his inner office at all, I have never been in a court room before I was so rattled that I wasn't exactly myself. Mr.Frank told me that morning he wished Mr. Schiff would come over and finish the

data, that he couldn't fix the financial sheet until Mr.Schiff got up the data, and he had Alonzo Mann telephone him to come ove over there to do it, but Mr.Schiff didn't come while I was there I said at the coroner's inquest that I didn't see Mr.Frank working on any of these books that day, that I was in the outer office and he was in the inner office. There wasn't any such looking sheet as the financial on his desk, When I was in there he was at work on a pile of letters and things like that.

RE-DIRECT EXAMINATION. .When I was first employed at the factory Mr.Nix said to me, "I will give $12.50 a week, when the busy season opens up, about the first of August, I will raise it to $15. About the middle of June, I asked him to raise it on the first of July, but he said, "We will wait until August 1st". At the time I testified at the coroner's inquest, I had never seen any of the financial sheets. I did not write a figure on that financial sheet. At the inquest I thought the average sheet was the financial sheet. I told Mr.Frank that I couldn't stay longer than 12 o'clock, and he asked me to stay all the afternoon and help him, that he was busy. I also heard him ask Harry Gottheimer to come over in the afternoon.

MISS CORINTHIA HALL , Sworn for the defendant.

I work in the finishing up department of the pencil factory I am a forelady. I was at the factory on April 26, I got there about 25 minutes to twelve. I had come to town on the East Lake car and got to town about 11:30 and it took me about five minutes to reach the factory. Mrs. Emma Clarke Freeman was with me, She had spent the night with me. We went there after her coat and to telephone, to call up Mrs.Freeman's husband. We went up to the fourth floor to get the coat and then came down and went in Mr.Frank's office. It was about 15 minutes to 12 when we left the factory. Mr. Frank was writing when we came in his office. His stenographer was in the outer office. Mrs. Freeman said she would like to use the telephone. She used the telephone and then we went out. During the ten minutes we were there he was talking

to two men between the outer office and the clock. He was dismissing those two men when we came. Mrs. White and the stenographer were in the office then also. As we were going up the steps, Mr. Frank called to Mrs. Freeman to tell Arthur White to come down that his wife wanted to see him. On the fourth floor we saw May Barrett, Arthur White and Harry Denham. When we left the factory, the following people were still there: Arthur White, Mrs. White, May Barrett, her daughter, Harry Denham, the stenographer and Mr. Frank. CROSS EXAMINATION. We met Mr. Holloway between Broad and Forsyth St. as he came out of the factory and as we went in. We met Lemmie Quinn afterwards at the Greek Cafe, don't know what time it was. When we came out, we went to corner of Alabama and Forsyth to use a telephone. It took us about about five minutes to go there and come back to Greek Cafe. We got cup of coffee and sandwich and were getting the change when Quinn came in.

MRS. EMMA CLARKE FREEMAN, Sworn for the defendant.

I married on April 25th. I worked at the pencil factory before that, at the time I was married. I was paid off on April 25, by Mr. Schiff. On the 26th, I reached the factory with Miss Hall about 25 minutes to 12. I saw Mr. Frank at his office. He was talking to two men when we went in. Mrs. White and Mr. Frank's stenographer were also in the office. Mr. Frank gave us permission to go up on the fourth floor to get my coat. While we were going up the steps Mr. Frank called to me to tell Mr. White that Mrs. White wanted him. We went on up, I got my coat and came down, and asked permission of Mr. Frank to use the telephone in his office. I used the telephone. I spoke to Mrs. White a few minutes and then we left, which was about a quarter to twelve. I remember looking at the clock. When we left there was in the building, May Barrett, the stenographer, May Barrett's daughter, Arthur White, his wife, Harry Denham and Mr. Frank. We met Lemmie Quinn afterwards in a cafe. He said he had just been up to see Mr. Frank. (Cross Examination waived.)

MISS EULA MAY FLOWERS, Sworn for the defendant.

I did not work at the factory on Saturday, April 26th. I worked there Friday, the 25th in the packing department. Mr. Schiff got from the data for the financial sheet on Friday night at ten minutes to six [illegible] production for the entire week.

from my department. It covers all the differant classes of work where the goods were finished.

CROSS EXAMINATION. I always turn those reports in Friday night or early Saturday morning. They don't touch Friday's work.

MISS MAGNOLIA KENNEDY, Sworn for the defendant.

I have been working for the pencil factory for about four years, in the metal department. I drew my pay on Friday, April 25, from Mr.Schiff at the pay window. Helen Ferguson was there when I went up there. I was behind her and had my hand on her shoulder. Mr. Frank was not there, Mr.Schiff gave Helen Ferguson her pay envelope. Helen Ferguson did not ask Mr.Schiff for Mary Phagan's money. I came out right behind Helen Ferguson. We waited for Grace Hicks and then went down stairs. Helen didn't say anything about Mr. Frank at all. We went downstairs about five minutes to six. We saw Helen Ferguson start up Forsyth Street.

CROSS EXAMINATION. On Monday, April 28, Mr.Barrett called my attention to the hair which he found on the machine. It looked like Mary's hair. My machine was right next to Mary's. There is a good deal of water over there by Mr.Quinn's room. Mary's hair was a light brown,kind of sandy color. You could plainly see the dark spots and white spot over it ten or twelve feet away. Helen and Mary were the best of friends and were neighbors. Helen made mention that Mary was not there when we were paid off. I have never noticed any spots around the metal room. That's the first time I had ever seen anything like that.

RE-DIRECT EXAMINATION.I have never looked for spots before. It's a dirty floor, full of oil dirt. I don't know whose hair that was. Helen did not ask Mr.Schiff for Mary's money. She did not have any business going to Mr.Frank when Mr.Schiff was there paying off. She did not go in and ask Mr.Frank for Mary's money. I left with her. I went one way and she went another.

168 RE-CROSS EXAMINATION.Mr.Frank paid off sometimes. If there is any trouble about the amount of our money we would go to [illegible] that was in the office. Mr.Frank was not paying off that day.

WADE CAMPBELL, Sworn for the defendant.

I have been working for the pencil factory for about a year and a half. I had a conversation with my sister, Mrs. Arthur White, on Monday April 28th. She told me that she had seen a negro sitting at the elevator shaft when she went in the factory at twelve o8clock on Saturday and that as she came out at 12:30, she heard low voices, but couldn't see anybody. On April 26, I got to the factory about 9:30. Mr. Frank was in his outer office. He was laughing and joking with people there, and joked with me. He thiught I wanted to borrow some money. I stayed about five or ten minutes and left the factory. That was about 9:40. I have never seen Mr.Frank talk to Mary Phagan. On Tuesday after the murder I went up on the fourth floor with Mr.Frank. I did not see the negro Conley talk to him at all that time.

CROSS EXAMINATION. My sister said she saw the negro when she went in the factory. When she heard the voices coming out, she was coming down the steps from the second floor. I saw the spots where they claim was blood, close to the girls dressing room, on second floor I couldn't say whether it was blood or not. I deny that I ever said that my sister said she saw the negro on the box when she came out of the factory. He was sitting on a box between the elevator shaft and the staircase. That looks like my signature. I don't know whether it is or not. Yes, I corrected certain statements in that paper.

RE-DIRECT EXAMINATION. I went to Mr.Dorsey's office because he subpoenaed me. I thought I had to obey it. Mr.Starnes and Mr. Campbell and the stenographer were there. All of the asked me questions. I signed a statement about twenty-one pages long. I have seen Jim Conley reading newspapers up on the fourth floor, twice since the murder. It is not unusual to see spots all over the metal room floor.

RE-CROSS EXAMINATION. Conley was sitting by the elevator when he was reading those papers, during working hours. The othe time he was reading down at the rear end of the building. It was an

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extra, but I don't know what paper it was. I knew that he could write because I had seen him do it several times, with pen and ink. I don't know whether he was making up his reports of boxes, but I have seen him writing. Yes, I have seen spots along the route from the ladies closet to the elevator ever since I have been there. They have red varnish and red paint and such things like that that look like blood. I am sure there are spots all around in the metal room, but I won't say they look like the spot near the ladies dressing room

LEMMIE QUINN, Sworn for the Defendant.

I am foreman of the metal department. Barrett pointed out to me where he ~~found~~ claimed to have found blood spots on the metal room floor. He asked me whether I thought that he (Barrett) would get the reward if Frank were convicted. He told me that several people told him that he had a good chance to get the reward. He said a fellow told him that he would get $2700 one time and $4500 the other time. He mentioned that reward to me on several occasions. The floow or the metal room is very dirty. You could not tell at the alleged blood spots whether they were varnish or oil. We have blood spots quite frequently when people get their hands cut. I remember a man by the name of Gilbert was hurt in that room. He was carried towards the main office by the ladies dressing room and sent to the hispotal. He bled freely. That was about a year ago. About eight months ago a boy cut his hand pretty badly and was carried by the ladies dressing room to the main office, right over the place where Barrett found the blood spots. His hand was bleeding. About a hundred women work in the factory. Haskoline is scattered all over the floor of the metal room. That floor has never been scrubbed since I have been to the factory. I could not tell what color hair it was Barrett found. There were only a half dozen strands in it. Think Chief Lanford took it. There is a place in the room where the girls dress their hair by a little gas jet which they use for heating a curling iron. It was about ten feet from the lathe where Barrett claims to have found the hair. If a breeze was blowing from this window from the west it would blow to where the girls were fixing their hair. The last time I saw Mary Phagan before the murder was Monday. She

left about two o'clock

were out of material and she was laid off for the rest of the week. I have never seen Mr. Frank speak to her. I went to the factory on April 26th, to see Mr. Schiff. He was not there. I often go to the factory on Saturdays and holidays. The street doors were open when I got there. I did not see Mary Phagan, nor Jim Conley, nor Monteen Stover. The doors to Mr.Frank's inner and outer office were open. The time I reached Mr. Frank's office was about 12;20. I saw Mr.Frank on Sunday at Bloomfield's undertaking establishment in the afternoon. He had on a black suit. ~~On Saturday he had on a brown suit.~~ There was no blood spots under the machine where Barrett claims to have found the hair. On Monday Mr. Frank had on a brown suit. There was no blood at the spot where Conley claims the body of the girl was found. It was perfectly dry there, there was no water on the floor.

CROSS EXAMINATION.

I noticed the blood spots at the ladies dressing room on Monday. I did not tell Mr. Payne and Mr.Starnes that I was not in the factory on April 26th. I told nobody that. ~~Mr. Frank~~ id not the first person to whom I told it. He did not tell me to keep quiet about it until he ~~saw his lawyer~~. I did not tell the officers about it. Mr. Frank said he remembered my being at thefactory,but did not remember the time. At the cornner's inquest I said it was pretty close to 12 o'clock when I got to Wolfsheimer's. I don't think it could have been as early as a quarter to twelve when I got to the factory. As to why I did not tell the officers, they could have gotten it if they had asked me. I never mentioned it to Barrett either. I told Chief Lanford on the following Monday that I was at the factory. I told it to Frank on Tuesday. He said he would mention it to his lawyers. I told Frank I didn't like to be brought into it,but if it would help him in any way I would do it. As to whether I ... or not was up to Mr. Frank. He afterwards told me that his lawyers advised him to

mention it at the coroner's inquest. That was Tueaday afternoon. I told you in the statement I gave you that I could not swear positively as to the time I was at the factory. I said I got to the pool room between 12:20 and 12:30. I had been up in the factory before I met Mrs. Freeman and Miss Hall at the Busy Bee. I was in the office and saw Mr. Frank bwteen 12:20 and 12:25. At the time I made the statement to youuthat I was there between 12:20 and 12:25 I had reckoned the time down as I have now. The bak door at the stairway going up from the office floor to the top floor is fastened with a bar. It is not closed except on pay day. It is true that a man on the office floor could easily lift the bar and walk up, but a man couldnot come down to the office floor from above at all. Anybody could fix that bar in its place in half a minute. I told you in the detective's office that I reckoned the time of my being in the factory from the time I left home and the destination I went to, and I said I could not remember the stop at Wolfsheimer's which took ten or fifteen minutes, and that Is why I reckoned it so positively. I left bome I know at about a quarter totwelve. I looked at my watch. It takes twelve or fifteen minutes to walk to the factory. I got to Wolfsheimer's pretty close to 12 o'clock. I was there ten or fifteen minutes.

RE-DIRECT EXAMINATION.

At the time the detectives and Mr. Dorsey talked to me about the murder, I overlooked the fact that I had been to Wolfsheimer's. My wife called my attention to it when I got home. I mentioned this matter to my father and my wife before I ever mentioned it to Mr. Frank. Mr. Frank did not tell me not to mention it to anybody. If a detective had asked me I would have told him what I knew about it. At the Coroner's inquest I said it could

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have been as early as twenty minutes after 12 that I got to the factory, because I had reckoned my time down from leaving home and the number of stops, and I said it must have been between 12;20 and 12;25.

HARRY DENHAM, Sworn for the Defendant.

I work on the fourth floor of the pencil factory. I was paid off Friday, April 25, I came back Saturday to do some work. Mr.Darley asked me to come back. I had to work on the machinery when it was not running. That was the only time I could do it. I got there about 7;30. Mr.Holloway was there when I get there. Between 12 and 1 o'clock I was working on the varnish machine. We were hammering. We worked until ten minutes after 3. We began to take an old partition out and put in a new one about 12 o'clock. It took a good deal of hammering. We were making a racket up there. May Barrett was the first person to come upstairs that day. She came about quarter past eleven. Stayed about three quarters of an hour. It was after 12 when she left. Mrs.Freeman and Miss Hall were the next to come upstairs and stayed about 15 minutes. They got a coat and went down. Mrs.White came upstairs about 12;30 to see her husband. She had a good long talk with him. She was still upstairs when Mr.Frank came up. He told Mr. and Mrs. White that he was going to dinner and would like to close the doors. He stayed up there just long enough to tell us that and then went downstairs. Mrs.White went right down behind Mr.Frank. I never heard the elevator run that day. I was up on the fourth floor all day. I can see the wheels turning on that floor. There were no noises in the factory that day, excepting street noises. When the elevator stops,it makes no noise. It shakes the floor a little when it stops. You can't hear anything except shaking the building when it starts. You can hear the elevator better when the machinery is not running. If the wheels had been running that day I could have seen them from where I was. When

I left at ten minutes after three, I saw Mr. Frank. Mr. White and I came down together. Before we went out, Mr.Frank came upstairs about three o'clock and asked was we getting out, and we told him we were getting ready to go right now. We were washing right then. When we came out we saw Mr. Frank at his desk in his office writing. Mr. White borrowed $2. from him. He did not look nervous or unusual. You can look down from the landing on the third floor and see whether anything is being put in or taken out of the elevator on the office floor. White and I on the fourth floor could have gone anywhere in the building that day. It was open to us.

CROSS EXAMINATION.

We were working about 40 feet from the elevator. There were crocus sacks upon the floor where we wereworking. The first time Mr. Frank came upstairs was abont ten minutes to one. At the cornner's inquest I said I wasn't certsin of the time. The second time he came up was about three o'clock. We had finished our work and were washing up and getting ready to go. I am not certain of the time he came up the first time. I think it was ten minutes to one. That's about the time Mrs. White left. He didn't say he was going right then. He said he wanted to go out. The wind was blowing strong that day and slapping the blinds backwards and forwards. There were no other noises inside the building. We stayed up on the fourth floor,all day,except one time when we went down about a quarter past eleven to have Mr.Holloway put some pieces on the band saw. It was a mistake when I told at the Coroner's inquest that I had not left the fourth floor at all that day. A person could have gone in the building and gone out and we not have known it. We were knocking and hammering all the time midways of the building. It might have been a good deal of noise on the office floor, and we would not have known it. I said

at the Coroner's inquest, that Mr. Frank had a habit of rubb-

ing his hands together. We left Mr. Frank in the factory when we left there. I saw some spots Monday they said was blood.

MINOLA McKNIGHT (c) Sworn for the defendant..

I work for Mrs. Selig. I cook for her. Mr. and Mrs. Frank live with Mr. and Mrs. Selig. His wife is Mrs. Selig's daughter. I cooked breakfast for the family on Spril 26th. Mr. Frank finished ~~his~~ breakfast a little after seven o'clock. Mr. Frank came to dinner about 20 minutes after one that day. That was not the dinner hour, but Mrs. Frank and Mrs. Selig were going off to the two o'clock car. They were already eating when Mr. Frank came in. My husband, Albert McKnight, wasn't in the kitchen that day between one and two o'clock at all. Standing in the kitchen door you cannot see the mirror in the dining room. If you move up to the northend of the kitchen, where you can see the ~~kitchen~~ mirror, you can't see the dining room table. My husband wasn't there all that day. Mr. Frank left that day sometime after after two o'clock. I next saw him at half past six at supper. I left about eight o'clock. Mr. Frank was still at home when I left. He took supper with the rest of the family... After this happened the detectives came out and arrested me and took me to Mr. Dorsey's office, where Mr. Dorsey, my husband and another man were there. I was working at the Selig's when they come and got me. They tried to get me to say that Mr. Frank would not allow his wife to sleep that night and that he told her to get up and get his gun and let him kill himself, and that he made her get out of bed. They had my husband there to bulldoze me, claiming that I had told him that. I had never told him anything of the kind... I told them right there in Mr. Dorsey's office that it was a lie. Then they carried me down to the stationhouse in the patrol wagon. They came to me for another statement about half past eleven or twelve o'clock that night

and made me sigh something before they turned me loose, but it wasn't true. I signed it to get out of jail, because they said they would not let me out. It was all written out for me before thay made me sign it.

CROSS EXAMINATION.

I signed that statement (State's Exhibit "J"), but I didn't tell you some of the things you got in there. I didn't say he left home about three o'clock. I said somewhere about two. I did not say he was not there at one o'clock. Mr. Graves and Mr. Pickett, of Beck & Gregg Hardward Co., came down to see me. A detective took me to your (Mr. Dorsey's)office. My husband was there and told me that I had told him certain things. Yes, I denied it. Yes, I wept and cried and stuck to it. When they first brought me out of jail, they said they did not want anything else but the truth, then they said I had to tell a lot of lies and I told them I would not do it. That man sitting right there (pointing to Mr. Campbell) and a whole lot of men wanted me to tell lies. They wanted me to witness, to what my husband was saying. My husband tried to get me to tell lies. They made me sign that statement, but it was a lie. If Mr. Frank didn't eat any dinner that day I aint sitting in this chair. Mrs. Selig never gave me no money. The statement that I signed is not the truth. They told me if I didn't sign it they were going to keep me locked up. That man there(indicating) and that man made me sign it. Mr. Graves and Mr. Pickett made me sign it. They did not give me any more money after this thing happened. One week I was paid two week's wages

RE-DIRECT EXAMINATION.

None of the things in that statement is true. It's all a lie. My wages never have been raised since this thing happened. [illegible] keep quiet. They always told me to tell the truth and it couldn't hurt.

EMIL SELIG. Sworn for the defendant.

I am Mr. Frank's father-in-law. My wife and I live with Mr. Frank and his wife. The kitchen in our house is next to the dining room. There is a small passage way between them. The sideboard in the dining room is in the same position now, as it has always been. Mr. Frank took breakfast before I did on April 26th and left the house before I breakfasted. I got back home to dinner at about 1:15. My wife and Mrs. Frank were eating then. They told me in the morning to come home a little sooner, that they wanted to go to Grand Opera that afternoon and have dinner a little earlier than usual, and I came home a little earlier. Mr. Frankcame in after I did, about 1:20. There was nothing unusual about him. No scratches or bruises about him. He sat down to his meal. The ladies left us while he was still eating. I don't know what Mr. Frank did after dinner. I went out to the chicken yard. Mr. Frank was still in the hallwhen I got back. I laid down and went to sleep. I did not see him when he left. I saw him about 6:30 that evening. Mrs. Frank and Mrs. Selig had not yet gotten back. They came in a short while. We ate supper about seven o'clock. I noticed nothing unusual about him at supper. We finished supper about 7:25. Mr. Frank sat in the hall and re ad. A party of our friendswcame to the house and playedd cards after supper. Frank and his wife did not play. They do n t play poker. They play bridge. He was reading in the hallwhile we were playing. He came in one time while we were playing and daid he read a story about a baseballlumpire's decision and he was laughing. Frank answered the doorbelllseveral times that evening when the guests came. - He and his wife went to bed before the company left, about 10 or 10:30. He came to the door and [illegible] and went up stairs. His wife went up shortly afterwards.

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Our party broke up about half past eleven. I did not hear the telephoning early Sunday morning. I saw no scratches on Frank Sunday morning.

CROSS EXAMINATION.

I have never seen the servants move that sideboard. I say it was about 1;20 when Mr.Frank came home to lunch,because I left town about 1;10. The car reaches our corner between 1;10 and 1;20. I got home a little after one. About 1;10.Mr.Frank may have laid down and taken a nap after dinner. I don't know. I laid down and took a nap. Mr. Frank was gone when I woke up. I have heard Mr. Frank frequently call up the factory from his home at night. I talked very little with Mr. Frank on Sunday when he got back home. I don't recall any conversation I had with him relative to the murder. I did not pay any attention to anything he said about the murder at dinner time. I have no recollection of telling Coroner's jury that he did not leave before I got up. I knew that he, my son-in-law, was Superintendent of factory and that a girl was found killed there,and I did not refer to the subject that day. I don't remember saying that Frank didn't say anything about it when he came home. I ate dinner with him. I remember stating at Coroner's inquest that Frank came home and didn't say a word about it all day to me.

MRS EMIL SELIG, Sworn for the defendant.

I am Mrs. Frank's mother. Mr. and Mrs. Frank have been living with us two years. The sideboard is in the same position it always has been except when we sweep under it. We had lunch on April 26th after 1 o'clock, about ten minutes past one. Mr. Frank came about twenty minutes past one while we were eating. He sat down with and ate. Mrs. Frank and I left home before he did. We left about half past one. He was still eating at the table. After the opera, while we were on the street car, passing Jacob's drug store we saw Mr. Frank at about 6;10. I happened to look up at the clock and saw it was 6;10. We stopped at my sisters, Mrs. Loeb, before going home. Mr. Frank was there when we got there. We saw nothing [illegible] bruises, wounds or marks. We got home about half past six. We sat down to supper about a quarter to seven. Mr. Frank ate with us. We finished at a

quarter past seven. We played cards that night in the dining room with a party of friends. Mr.Frank and his wife did not play. They do not play poker. They play bridge. He was sitting in the hall reading. Mr. Frank answered the doorbell and let in some of the guests. He came in once while we was playing cards to tell us about a joke that he had read about an umpire and he laughed out very heartily. He went to bed between ten and ten thirty. He told us all goodnight before going. Mrs.Frank followed a few minutes afterwards. We played cards until about twelve. I did not hear the telephone ring next morning. I t did not wake me up. I saw Mr. Frank next day about 11 o'clock. I saw no blood spots or marks or bruises or cuts about him. I think he was arrested on Tuesday.

CROSS EXAMINATION.

I am not mistaken about seeing Mr.Frank about 1;20 on Memorial day. We were eating dinner when he came in. Mr.Frank got home about 11 o'clock Sunday. He told us he had been sent for to come to town. He spoke of a crime having been committed. I asked him what had happened. I don't remember that he told me about the crime. He did not seem unconcerned about it. I said at Coroner's that I thought he seemed unconcerned about it. I don't remember his remarking about the youth of the girl or the brutality of the crime. He didn't describe any wounds. He didn't give any theory as to how it happened. He was anxious as to how it happened. I have forgotten what suits Mr. Frank wore Saturday, Sunday and Monday. I think I said before the Coroner that he wore the same suit Saturday, Sunday and Monday. But I was mistaken. I don't remember saying before Coroner whether Frank evidenced any curiousity or advanced any theory about it or not. I knew he wore one suit during the week and a different one on Sunday, and my impression was that on that Sunday he wore the same nne. I don't think Mr. Frank mentioned the name of the girl that was killed on Sunday. The first that I knew of it was when I saw her name in the paper the next morning. The subject was mentioned at the dinner table on Sunday.

RE-DIRECT EXAMINATION.

My health is bad and I did not care to hear much of the facts of the crime at the time. I was operated on the next day. Mr. Frank spared my feelings. These are the clothes Mr. Frank wore on April 26th(Defendant's Exhibit 49).

MISS HELEN KERNS Sworn for the defendant.

I work for the Dodson Medicine Company as stenographer. My father works for Montag. I took shorthand under Professor Briscoe last winter. I have seen Mr. Frank in his factory. I went there with Professor Briscoe to get a job. I didn't get the position. I was working on the 26th day of April for Bennett Printing Company. That day I got off about 12 0'clock. I then went around in town to the different stores and did some trading. I had an appointment to meet a girl at 1:15 at the corner of Whitehall and Alabama Streets, at Jacobs' Drug Store. About 5 minutes after one I came out of Kress Store on Whitehall Street. I looked at the clock in front of Freeman's Jewelry Store. I immediately went to Kacobs Corner. I had been standing there about five minutes and I turned around and saw Mr. Frank standing there right up against the building at the corner of Alabama and Whitehall street. I do not know how long he had been there. That was about ten minutes after one. After I saw him I waited about ten minutes until my friend came. She was a little behind time. She came about twenty minutes after one. I read about this tragedy about the middle of the week. I then recall seeing him about that place and told my father.

CROSS EXAMINATION.

Yes, there was a large crowd on the street that day. I had been standing there about five minutes when I turned around and saw Frank. It was not packed and jammed at that time, not up against the building. [illegible] did not come along

untillalmost three o'clock. There was plenty of room on that corner. I stood there from five minutes after one until twenty minutes after one. After I met my friend we went back to Kress. I did not speak to Mr. Frank. He was standing up against the building up Alabama Street. It was not real crowded up Alabam a Street. You could not stand in the middle of the sidewalk. I got a clear view of Mr. Frank. I don't think he saw me. I don't think he would have recognized me because he sees so many faces every day he would not know mine. I had only met him once. I recognized him. I can't be mistaken about the time I saw him because I lookee at the clock just before I got there. When my friend met me we went around the corner. The clock stood twenty minutes after one. Kress' store did not close at 12, because I was in there after 12. I am sure of that. I was watching the clock because I had an appointment at a quarter after one. I left Kress'at five minutes after one and went down Whitehallstreet to Jacons' corner. Whitehallstreet was badly crowded. It didn't take me more than a minute or a minute and a half to walk down to the corner. It was only a few steps. There was no one standing between Mr. Frank and myself on Alabama Street.

MRS. A. P. LEWY sworn for the defendant.

I live right across the street from where Mr. Frank lives. I am not a relation of his either by blood or marriage. I saw him get off a car on Memorial Day ~~about 1:20~~ between 1 and 2 o'clock. I was dressing to go to the matinee and was watching the cars as they passed to look out for my son who was late to dinner and saw Mr. Frank get off the car and cross the street to his home. I had a clock on my dresser and also one in the dining room, and I was hurrying to meet a friend at 2 o'clock, and I wanted to see a sick friend before going to matinee.

CROSS EXAMINATION.

I noticed that Mr. Frank got off at 1:20, because I was looking at the clock. I was watching the car for my son. I had already had lunch. I could not wait for him. He tried to get me over the phone but could not reach me. The reason I knew it was that time I was looking at my clock and not seing the cars as they passed and my son had nott come yet. That was the only reason I would have noticed it.

RE-DIRECT EXAMINATION.

My childred on Memoriall Day instead of coming home at 12:20 or 12:30, came home at 1:30.

Mrs. M. G. Michael, Sworn for the defendant:

I live in Athens, On April 26th I was at 387 Washington Street at 2 o'clock, at the r4sidence of my sister Mrs. Wolfsheimer. Mrs. Frank is my niece by marriage. I am no kin to Mr. Frank. I saw Mr. Frank about 2 o'clock on April 26th. He was going up Washington Street towards town when I forst saw him. I remember it was about 2 o'clock, because My son David was going to the matinee and he had to leave home before 2, and he had just left a few minutes when I saw Mr. Frank. I was on the front porch when I saw him. He came up just to the front porch. He greeted me and asked me about my people at home. We carried on a casual conversation/ I noticed nothing unusual about him. I noticed no scratches or marks or any nervousness about him. He walked up Washington Street to the corner of Glenn and caught the Washington St. going to town at Glenn Street. My son Jerome, my nephew Julian Loeb and my sister Mrs. Wolfsheimer were also there and saw him.

CROSS EXAMINATION.

He had not seem me for several weeks. He didn't know I was in the city, and when he saw me there on the poroh he came over

to speak tobme. 387 Washington street is three doors above Georgia Avenue. I saw him take the car at the corner of Glenn and Washington St.

JEROME MICHAEL, Sworn for the defendant.

I live in Athens. I was in Atlanta on April 26th. I took dinner at Mrs. Wolfsheimer's residence at 387 Washington Street. I saw Mr. Frank upon that day between five minutes to 2 and 2 o'clock. I know it was that time because I had an engagement with a young lady and I had a watch in my hand most of the time. My brother Dave had just left for the operawhen Mr. Frank came up. When I first saw him he was going toward the r right hand corner of Washington Street and Georgia Avenue, going up Georgia Avenue. I saw him and called him and when he saw my mother standing on the porch he came over and spoke to her. He stood on the steps of the porch, he stood there just a few minutes until the next car came. I noticed absolutely nothing unusual about him. No scratches, bruises, marks and no hervousness. He ran up to the corner of Glenn and Washington Streets and caught the Washington St. car there going to town.

CROSS EXAMINATION.

I had my watch in my hand about the time I saw Mr. Frank. I practice law.

MRS. HENNIE WOLFSHEIMER. Sworn for the defendant.

I am the aunt of Mrs. Frank. I live at 387 Washington St. the third house from the corner of Georgia Ave. On April 26th I saw Mr. Frank in front of my house. It was about 2 o'clock. We had finished dinner which we ate at hapf past one. I was not on the porch when he came up but I walked out on the porch after he came. I did not see him catch the car as I was called in the house before he left. I saw nothing unusual about him. No nervousness or bruises or scratches. I [illegible] stains on his clothes, no marks or tears of any kind.

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CROSS EXAMINATION.

The time is fixed in my mind because we ate dinner athalf past one and we had just finished. I was not looking for any scratches or bruises, but I certainly would have seen them if they had been there. I was close enough to him to have seen him.

JULIAN LOEB Sworn for the defendant:

I live at 380 Washington Street, across the street from the Wolfsheimer residence. I am a cousin of Mrs. Frank. I saw Mr. Frank on April 26th in front of the Wolfsheimer residence. I was there when he came by. It was between 1:50 and 2 o'clock. He was talking to Mrs. Michael and Mrs. Jerome Michael and was inviting them to attend a meeting of the B'nai B'rith lodge on the next day which was Sunday. He was president of that lodge. He left and walked towards town up Washington St. towards Glenn. I didn't see him catch the car.

COHEN LOEB Sworn for the defendant.

I was on the car with Mr. Frank going back to town on April 26th after lunch. I caught the car at Georgia Ave. and Washington St. He caught the car at Glenn and Washington St. which is one block nearer town. That was about 2 o'clock. It was a Washington St. car which goes straight up Washington St. to the Capitol and turns down Hunter. We sat together on the same seat on the car. Mr. Frank got off the car about two or three minutes before I did. He got off in front of the Capitol at about 2:10. The car was blockaded by the crowd which was watching the parade. Mr. Frank went down Hunter St. There was nothing unusual about him. No marks, or scratches or spots on him. He had on a brown suit and a derby.

CROSS EXAMINATION.

Mr. Frankwas sitting next to the window. I know Mr. Hinchey. I did not recognize him as he passed our car in the machine but I

recognized his machine. It was going down the street. I recognized it by the dark color. It passed right in front of the car so close as to hit the car and that's what called it to my attention. The top of the machine was up and the sides were open. The car was a dark maroon color and seats from four to seven passengers. I don't know the number of it. I just saw a dark maroon car. I found out afterwards that it was Mr. Hinchey. I only noticed that particular automobile because it ran up in front of the car and the car hit it and nearly turned it over. The accident occurred right at us. There was no jolt to the street car. It was going too slow. They just came together and scraped.

H. J. HINCHEY, Sworn for the defendant:

I have known Mr. Frank between four and five years. I am mechanical engineer for the South Atlantic Blow Pipe Co. I saw Mr. Frank on April 26th opposite the main entrance to the Capitol on Washington Street. I was driving an automobile. He was on the streetcar coming down Washington St. going to town. I saw him but did not speak to him. It was between 2 and 2:15. As to how I know that was the time after this matter came up I experimented to see just what time it was I saw him on the car, and I have gone over my movements just as I did them on that day, and the first time I experimented I got to the Capitol five minutes past two, and the second time I got there at eight minutes past two, and the third time exactly at two o'clock. I came very near colliding with the car in front of the capitol, as I drove around in front of the capitol. Thiscar Mr. Frank was on rolled up in front of me. As I looked up at the car I saw Mr. Frank sitting in the front end of the car.

CROSS EXAMINATION.

I saw him only for a moment. I was too much occupied in trying to get out of the way of cars and vehicles. The crowd

was very thick. I have been to see Mr. Frank once in jail. I mentioned to him that I saw him that day. MR. Frank and I were only business friends. We have had pleasant business transactions and also controversies. I did not go to jail to talk it over with him. I went there because I had been knowing him for five or six years and was interested in him, because he was implicated in the case. We were not personal friends, but have had a great many business dealings with each other and I naturally felt an interest in this matter.

MISS REBECCA CARSON, Sworn for the defendant:

I wotk at the National Pencil Co. I have been there over three years. I work on the fourth floor. I am forelady of the sorting department. I have from thirteen to fifteen girls under me. At times I have heard the elevator running when the machinery in the factory was not running. It makes a noticeable noise. You can notice the vibration of the building and you cam notice the ropes of the elevator running, and you can hear the cables of the elevator knocking. On Friday, April 25, I got my pay about 5:30 from the office. On April 26th I saw Mr. Frank looking at the parade in front of Rich's between 2;20 and 2;25. He spoke to me. I saw him again at ten minutes to three going into Jacobs' Pharmacy at the corner of Whitehall and Alabama St. I looked at the clock at that time. On Monday morning I said to Jim Conley, "Where were you on Saturday? Were you in the factory?" He said, "I was so drunk I don't know where I was or what I did." And Snowball, who was standing there, said, "I can prove where I was. I also overheard a conversation that he had with my mother when he said Mr. Frank was just asn innocent as an angel; and when my mother said "The murderer will be the negro Mrs. White saw sitting on a box at the foot of the stairs," Jim dropped his broom quick and didn't finish

CROSS EXAMINATION.

He made that remark to me about 8 o'clock Monday morning and I went right back and told my mother of it. The elevator makes enough noise to know it is running. You don't notice it when the machinery is running. You wouldn't know whether it was running or not unless your attention is directed to it. I had looked at the clock five minutes before I saw Mr. Frank in front of Rich's. I had just looked at the clock also before I saw him going into Jacobs'. I am certain of the times I saw him. That was the exact time by the clock. I get $10.00 a week. Last time my salary was raised it was raised in January. There has been no raise since then. I had heard that some of the s sweepers sometimes stay on Saturday afternoons to sweep. I didn't know it. I just asked him if he was there at the factory Saturday afternoon. He never before admitted being drunk to me before. Nobody suspected Jim of the murder at that time. I told my mother of it because I tell her everything. I told Mr. Darley about it. I don't remember when I told him. It was before Conley was arrested on Thursday. I told Mr. Rosser when he was at the factory. That was after Jim was arrested. I did not see the red spot in the metal room on Monday. I didn't go in the metal room until Tuesday. I didn't see it then, because I wasn't looking at the floor.

MRS. E. M. CARSON, Sworn for the defendant.

I worked at the Pencil Factory three years. Rebecca Carson is my daughter. I am a widow. I have seen blood spots around the ladies' dressing room three or four times. I was at the factory Friday morning. I left about 12:45. I saw Jim Conley on Tuesday after the murder. He was sweeping around my table. I said "Well, Jim, [illegible] you yet", and he says, "NO."

On Wednesday I said the same thing and he answered the same thing. On Thursday when I said that to him again he said, "No, I ain't done nothing." I said, "Jim, you know Mr. Frank never did that," and he sayd, "No, Mr. Frank is as innocent as you is, and I know you is." I said, "Jim, whenever they find the murderer of Mary Phagan it's going to be that nigger that was sitting near the elevator when Mrs. White went upstairs. He laid his broom down then and went out. I would not believe Conley on oath.

CROSS EXAMINATION.

My daughter and I work on the fourth floor. Mr. Frank was up on the fourth floor Tuesday between nine and eleven o'clock. Everybody in the department was around there at that time. I don't know whether any of them heard the conversation between me and Mr. Frank then. I saw both Mr. Frank and Jim Conley on the fourth floor on Tuesday. I did not see Mr. Frank whisper to Conley. Mr. Frank never said a word to any of us about sticking to him. He said it was a deplorable thing little Mary being killed. I have seen blood in the dressing room around the lockers and some around the mirror. I have seen girls up there mash their fingers on the machines. I have seen blood in the sink in the toilet room and on the machines where they cut their fingers. I saw a spot about as big as my hand sometime last year on the fourth floor near a garbage can. It looked like blood to me. I have seen spots about as big as my finger, different spots up on the fourth floor. I have seen girls once or twice come in with their fingers mashed come into the toilet room and go to the sink after they had mashed their fingers. I don't know when I heard that Mrs. White said that she had seen a negro sitting on the box. I think I read it in the paper sometime that week. The big spot of blood I was talking about was occasioned by the girls whose sickness was on them. I have never seen Mr. Frank or anybody

189 anybody down at the office at any time drinking beer

or doing anything of that sort. I did not go down and see blood on second floor near dressing room.

MISS MARY PIRK, Sworn for the defendant.

I am one of the foreladies working at the National Pencil Co. I am at the head of the polishing department. I have been there about five years. I talked with Jim Conley Monday morning after the murder. I accused him of the murder. He took his broom and walked right out of the office and I have never seen himsince. His character for truth and for veracity is bad. I would not believe him on oath.

CROSS EXAMINATION.

I suspected Jim as early as Monday, April 28th. I did not report it to Mr. Frank then. I don't know why I didn't. I knew that Gantt and Newt Lee and Mr. Frank had been arrested. Yes, I have never said anything about it to anybody. I suspected Jim because he looked and acted so different. I told Mr. Arnold and Mr. Rosser about it when they asked me about it. That was after Jim was arrested. Jim acted very peculiar but I thought best not to say anything about it. I knew the company was anxious to get the murderer, but I just didn't mention it. I don't know why. I mentioned it to several of the girls standing around, Miss Denham, Miss McCord, Mrs. Johns and several others. I accused Jim before I saw the blood at the ladies' dressing room. It was all smeared over with some kind of white stuff. It covered about two feet an area. I mentioned it to the girls before Jim was arrested. I am not sure whether it was before or after. It was after the Coroner's inquest. I have seen several spots in the factory that looked like that spot many times. All kinds of spots. I have seen spots before that looked like that. I don't know exactly when. My opinion is that Mr. Frank is a perfect gentleman. I always found him to be one in my dealings with him. I have never heard any of the girls say anything about him. I have never heard of

a single thing immoral that he did do in those five years. I have never heard of his going in the girls' dressing room. I have never heard of his slapping them as he would go by. I have never heard Mr. Frank talk to Mary. I have never heard of the time Mr. Frank had her off in the corner there when she was trying to go back to work.

Mrs. DORA SMALL Sworn for the defendant.

I worked on the fourth floor of the pencil factory for five years. I saw Jim Conley on Tuesday. He was worrying me to get money from me to buy a newspaper and then he would come and ask me for copies of the paper before I would get through reading them. They were extras. He would even get two of the same edition. He would take it and run over there and sit on an box by the elevator and read it. He can read alright. He had on an old Norfolk coat with a belt around it and it buttoned just as tight around his neck as it could be. Before that he had gone around there all open and loose and as slipshod as he could be. I could not tell whether he was wearing a shirt or not because his coat fastened up so tight. He told me "Mr. Frank is just as innocent as I am and he says, "God knows I was noways around this factory on Saturday." I didn't see Mr. Frank talking to Jim anywhere in the factory on Tuesday. I have never seen him talk to that nigger in my life. I have never been down in Mr. Frank's office after hours, drinking or doing anything wrong at any time. I have known Conley for two years. His generalreputation for truth and veracity is bad. I don't know of any nigger on earth that I would believe on oath.

CROSS EXAMINATION.

I would not believe Snowball on oath. I wouldnot believe any nigger. I got a fifty cent raise in salary about four months ago. I have got no raise since Mr. Frank

It was before this murder took place. I did not see Mrs. Carson talk to Jim on Tuesday or Wednesday. She worked in one end of the building and I worked in the other. I saw Mr. Frank and Miss Carson talking on business between eight and nine o'clock on Tuesday. They stopped right in front of my machine. Mr. Frank went downstairs and Miss Carson went on back to her work. He used to come up there frequently. Conley was standing at the elevator. He was standing with his hand on a truck. He was not sleeping. He must have seen me and Mr. Frank. Mr. Frank did not see Conley. When Mr. Frank went down the steps Conley was still standing at the elevator. Conley was asking me for newspapers all during the morning every time they would holler "extra". He would come to me. That was after Mr. Frank had gone. That continued all day Tuesday and Wednesday. I didn't buy any extras on Monday. I bought four before noon on Tuesday. The elevator makes a right smart noise. Shakes the whole building. Anybody in the world can tell it is running if the machinery is not running; but you can't notice it much unless you are right close to the elevator. Some of us went back in the metal room one day to see if we could see any blood spots. Mrs. Carson and Mrs. Thompson I think were with us. Curiosity led us down there. We saw where the floor had been chipped up. Saw something that looked like white face powder around the chipped up placed. Looked like some of the girls had powdering their faces and spilt the powder. There were two or three spots, some the size of a nickle and some the size of a quarter. The floor was very dirty all over.

MISS JULIA FUSS, Sworn for the defendant.

Here

I work on the fourth floor of the pencil factory. I have never known anything wrong or immoral to be going on in Mr. Frank's office. I talked to Jim Conley Wednesday morning after the murder.

192 He was [illegible] there and asked me to see the newspaper.

As he read it he kinder grinned. He told me he believed Mr. Frank was just as innocent ~~from~~ as the angels from Heaven. I know his general character. He was never known totell the truth. I would not believe him on oath.

CROSS EXAMINATION.

I saw the darl red spots by the water cooler in the metal room where they had chipped up something. Something white was dropped all over it. The spots did not look like they had been smeared over. Looked like a plain drop of blood. I think it was paint because there was paint used there all the time. They asked me soon after the murder about the general character of Frank. They asked me if I knew anything against his character and I told them no. They generally sp oke well of him. They always spoke good of him. I have always heard him spoken of in the highest terms. I have never heard him accused of any act of immorality or familiarity with the girls in the factory. Jim Conley got two papers from me on Tuesday and Wednesday. I bought them. Jim always seemed to be kind of ner vous or half drunk or something. He did not arouse my suspicions until after he began to read the papers and grin about them and comment on them. I didn't see Mr. Frank speak to Conley on Tuesday. Conley was not there. I am sureof that. Mr. Frank came up there twice, He once at first and again in 15 or 20 minutes came around to see if everything was in good working order. He spoke to Miss Carson and Mr. Darley and to a little boy. And then went on down stairs. He came back in about fifteen or twenty minutes to see if everything was going on alright. He spoke to Miss Carson again about the work. He always came upstairs to see if everything was going on alright.

~~EDGAR~~ BEARD (c), Sworn for the defendant.

I am Mr. Schiff's servant. On April 26th ~~I received~~ Mr. Schiff on the telephone. I answered the telephone. It was

about half past ten. It sounded like a boy's voice. It said, "Tell Mr. Schiff Mr. Frank wanted him at the Office. Mr. Schiff Was asleep at the time. I waked him up and he said, "tell Mr. Frank I will be there as soon as I can get dressed." And I repeated the message to the boy and told him what Mr. Schiff said. Then Mr. Schiff went back to sleep again. The same voice called up Mr. Schiff again about eleven o'clock. Said he wanted Mr. Schiff to come down to the office. Mr. Schiff told me to tell him he would be there as soon as he could get dressed and I told him what Mr. Schiff said.

CROSS EXAMINATION.

I have been in Mr. Schiff's house about seven years. On Saturdays and holidays Mr. Schiff generally sleeps. Sometimes he goes to the factory when I wake him up. He never gets up unless I wake him. Mr. Schiff told me sometime afterwards he was glad I did not wake him up that day. I know it was eleven o'clock when he called up the second time, because the clock was striking. They didn't say what Mr. Frank wanted him for.

ANNIE HIXON (C) Sworn for the defendant.

I am Mrs. Ursenbach's servant. Mr. Frank called up on the telephone about half past one on April 26th. I told him he was not in and he said "Tell Mr. Charlie I can't go to the ball game this afternoon." I told Mrs. Ursenbach about it.

CROSS EXAMINATION.

I have been working for Mrs. Ursenbach two years. Mr. Frank and his wife came over to Mrs. Ursenbach's on Sunday after we had breakfast about nine o'clock. They come over there every Sunday. I didn't pay any attention to what they talked about that morning. They were just laughing and talking like they always do. Yes, he laughed. They were all laughing together.

He wasn't nervous or excited so far as I could see. Nothing unusual about him. Don't know what they were laughing about.

J. C. MATTHEWS. Sworn for the defendant.

I was at Montag Brothers on April 26th. I saw Mr. Frank in the office of Montag Bros. in the morning of that day. I couldn't give you the exact time. I work at Montag Bros.

ALONZO MANN, Sworn for the defendant.

I am office boy at the National Penoil Company. I began working there April 1st, 1913. I sit sometimes in the outer office and stand around in the outer hall. I left the factory at half past eleven on April 26th. When I left there Miss Hall, the stenographer from Montags, was in the office with Mr. Frank. Mr. Frank told me to phone to Mr. Schiff and tell him to come down. I telephoned him, but the girl answered the phone and said he hadn't got up yet. I telephoned once. I worked there two Saturday afternoons of the weeks previous to the murder and stayed there until half past three or four. Frank was always working during that time. I never saw him bring any women into the factory and drink with them. I have never seen Dalton there. On April 26th, I saw Holloway, Irby, McCrary and Darley at the factory. I didn't see Quinn. I don't remember seeing Corinithia Hall, Mrs. Freeman, Mrs. White, Graham, Tillander, or Wade Campbell. I left there 11.30.

CROSS EXAMINATION. When Mr. Frank came that morning, he went right on into the office, and was at work there and stayed there. He went out once. Don't know how long he stayed out.

M. O. NIX. Sworn for the defendant.

I am credit man for Montag Bros. and bookeeper. I have charge of the bookeeping and documents and papers of the National Pencil Company. I am familiar with Mr. Frank's handwriting. These financial sheets beginning with May 23nd, 1913 and ending May 24, 1913, (defendant exhibit 9) are in Mr. Frank's handwriting. The eleven items beginning with order #7187 running through #7197, appearing on pages 56 and 57 of the house order book (Defendant's exhibit 13) are in Mr. Frank's handwriting. These entries below that are in Miss Hattie Hall's handwriting. I employed Miss Hattie Hall as my stenographer. Mr. Montag and Mr. Frank had nothing to do with it. I raised her wages on first of August, because I promised her that when she first came here. These eleven requisition sheets (defendant's exhibit 35 to 35 inclusive) are in Mr. Frank's handwriting. I saw Mr. Frank on the morning of April 26, at Montags. He asked me to allow Miss Hattie Hall, my stenographer, to go over to the factory to assist him as his stenographer was away and he was piled up with work. And I told him

I didn't think she should go until she finished Mr.Montag's mail. He said something then about her coming over in the afternoon,and I said I didn't think she ought to work over there as it wasn't her work,and I told her not to do it,but I told her if she got through with Mr.Montag's mail,she could go over there that morning and help him,if she could assist him in anyway.

CROSS EXAMINATION. I have never seen Frank write any of the documents which I say are in his handwriting. I have seen him write. I don't know their system of doing work down at the factory. This order could not have been received on April 22nd(Defendant's exhibit 27) The signature of H.T.Schiff on the requisition sheets(defendant's exhibits 25 to 35 inc.) means that he checked it when the order was filled. I have been with Montag Bros.seven or eight years.I don't know whose handwriting that is.(state's exhibit K). It looks like Mr.Frank's, but it is not clear to me.It is entirely different from his usual handwriting. It is different from those I have identified postively as Mr.Frank's,but it is figures on those,and here it is in the form of a letter. There is no comparison. With a few capital letters you can't get an idea of qf a mans handwriting. I am not positive that that is Mr.Frank's handwriting. It might be. You take this sheet here(requisition sheet) and you can't get an idea od a man's handwriting from this,becaause everything is figures in here. His writing might be entirely different if he sat down to write a letter.

RE-DIRECT EXAMINATION. I have never seen a letter written by Mr. Frank. The only writing of his that I am familiar with are figures and things like that,pay-rolls,writings in requisitions and words that consist largely of abbreviations.

HARRY GOTTHEIMER,Sworn for the defendant.

I am a traveling salesman I make two trips a year for the National Pencil Company,from the first of February to the first of April,and from the first of September to the fifteenth of October. I was at Montag Bros.around ten o'clock on April 26th. I had come in from my trip on the road and was writing up my orders. I had been away ten days.Mr.Frank came in after I got there. I asked him about

two important orders as to their shipments and he replied that he could'nt tell whether they had been shipped or not,but that if I would return to the factory with him he would give me the duplicate invoices and let me see for myself. I replied that I would not have time to go back, as I had lots of orders. He says:" If you can't come now,come this afternoon." And then he walked in to Mr.Montag's office,and as he went into the office he said "Come up now,or come up after dinner."

CROSS EXIMINATION. I saw Frank in his office one Saturday afternoon in the early part of April about three o'clock.His wife was there doing some stenographic work for him. Mr.Frank said Saturday morning April 26th,that if I couldn't come to the factory in the morning that I should come in the afternoon. I am sure of that conversation. Miss Hall heard part of it. I had been in his office on previous Saturday afternoons. I never found any of the doors locked. He was always working.

MRS. RAE FRANK,Sworn for the defendant.

I am the mother of Leo Frank.I live in Brooklyn.I lived in Texas three years,where Leo was born.Mr. Moses Frank of Atlanta is my husband's brother. I saw him Hotel McAlpin in New York City on April 27 and April 28th.The letter that you hand me(defendant's exhibit 42) I saw on Monday,April 28th. It is my Son's handwriting.This sheet(defendants exhibit 43)is a sort of financial sheet. I had lunch with Mr. Moses Frank at Hotel McAlpin on Monday,April 28th.His wife read this letter to him in my presence and it was handed to me afterwards. I also saw that sheet (defendant's exhibit 43)but I did not understand it. The handwriting on that envelope (exehibit for defendant 44) is that of my son. The word "Yondiff" in the letter is Hebrew meaning " Holiday".

CROSS EXIMINATION. The letter was folded exactly as it is now to the best of my recollection, just in that shape. Mr.Frank has no rich relatives in Brooklyn. That is my son's handwriting(states exhibit K) It is a photographic copy. There was another paper included in the envelope which that letter came in some price list, but I didn't

look at it.It had numbers of pencils and prices on it. That letter was read in Hotel McAlpin,in Mr.Mose Frank's room. As to what relatives Mr.Frank has in Brooklyn,my brother-in-law Mr.Bennett is a clerk at $18 a week. My son-in-law Mr.Sterne is in the retail cigar business. As to what my means of support are,we have about $30,000, out at interest,my husband and I,at six per cent.We own the house we live in. We have a $6,000,mortgage on it. The house is worth about $10,000. My husband is doing nothing. He is not in good health. Up to a year ago he was a traveling salesman. These are the only relatives my son has in Brooklyn. Mr. Moses Frank,my brother-in-law, generally spends a Sunday with us in Brooklyn,before he sails for Europe. He spends Sunday with us in Brooklyn and has dinner with us. He was not in Brooklyn on April 26th. He is supposed to be very wealthy. I don't know how much cash my husband has in bank. A few hundred dollars possibly. My husband is 67 years old. He is broken down from hard work and in very poor health. He was too unwell to come down here.

OSCAR PAPPENHEIMER,Sworn for the defendant.

I am in the furniture business.I am also a stockholder of the National Pencil Company.I have been getting comparative sheets as to the weekly business of the Company from Frank since March,1910. Up to the time the Post Office distributed mail on Sunday,I used to always go to the Post Office to get my mail and always found this report on Sunday morning. When I quit going to the Post Office on Sunday's I received the reports in the first mail on Monday mornings. I have here the report for the week ending April 24,1913(defendant's exhibit 45) I got that on Monday morning,April 28th. I also have here all the comparative sheets received by me every week beginning January 18,1913,up to April 24,1913 (Defendant's exhibit 46).

C. F. URSANBACH, Sworn for the defendant.

I married a sister of Mrs.Leo Frank. I phoned him on Friday and asked him if he would go to the base ball game Saturday. He said he didn't know,he might go and would phone me later and let me know. On Saturday when I got home about twenty minutes to two my cook told me that Mr.Frank had phoned and told me that he wasn't going to the game. I saw him on Sunday,after the murder,at my house. I saw no scratches marks or bruises on him. He seemed to be a little disturbed in mind. I saw him again that afternoon. He told us about the tragedy. That evening we meet him and his wife coming down Washington St. opposite the Hebew Orphans Home. He gave me my rain coat right there,which he had borrowed previously.

CROSS EXAMINATION. He and his wife and my wife and myself generally play cards Saturday evening. We were very much interested in bridge and played to-gether often. Mr.and Mrs. Selig's family usually played poker Saturday night. Mr. Frank and his wife never played poker. I am postive I rang Mr. Frank up and asked him to go to the ball game. Mr. Frank called it off about one thirty on Saturday when I got home and got the message from my cook it was twenty to two. Mr. Frank borrowed my rain coat at 4.30 on Sunday when it was raining, and I met him about 6 o'clock on Washington Street,and he returned it. He never had that rain coat until sunday afternoon. I am postive that he did not have it on Saturday.

Mrs. C. F. URSANBACH, Sworn for the defendant.

I am Mrs. Leo Frank's sister. I received a telephone message for Mr. Ursanbach from Mr. Frank through my cook on Saturday at half past one. I saw no scratches,bruises,or marksон Mr. Frank on Sunday. He was nervous as one would have been under the circumstances. He borrowed a rain coat from my husband that afternoon. The rain coat was at our house on Saturday. It was there when my husband asked him if he would wear it on Sunday.Mr. Frank did not have it on Saturday.

CROSS EXAMINATION. On Sunday, Mr. Frank when he was at the house told us he had been called downtown and that this little girl was murdered, and he told what a horrible crime it was. He did not say who committed it. He said nothing about employing a lawyer. He said nothing about how he slept the night before. I think he told about being at the undertakers, in the afternoon. I did not hear him say anything about his visit to the undertakers in the morning. He said he had been taken down to the factory in the morning by the detectives. He said he had thought he heard the telephone ringing in his sleep, the night before. He said when he saw the corpse it was a grewsome sight. He said nothing about why he did not stay in the room and look at the corpse longer or more carefully. He said nothing about suspecting Newt Lee as being the guilty party. He said he was sorry he let Gantt in the factory Saturday afternoon, because he mistrusted him, because he had not been honest. He did not say he thought Newt Lee or Gantt had committed the crime, He said nothing about the clock having been improperly punched. I was not in the room the entire time. I had guests and I was out a good deal of the time. I don't know if he knew the name of Mary Phagan then or not. I think he said she was choked , He didn't say anything about a cord around her neck, but said she had a piece of her petticaot around her neck. He mentioned he had paid her off the Saturday before. I don't know that he mentioned the name of the girl at all at that time. He said he had discharged Gantt because he was not honest. I think he said Newt Lee was a good fellow as much as he knew about him. On Monday night over at Selig's Mr. Frank was there and we had conversation on the subject. He spoke of having a detective at the house in the morning, that the detectives thought that he had done it and how strange it was that they should say so. He didn't say that he suspected anybody. He seemed to be calm as usual that night. He never mentioned suspecting anybody of the crime. On Monday night, he said he had been suspected in the morning by the detectives. That night he sat on the couch and patted his foot. That was the only indication of nervousness I saw. Mr. Frank did not have Mr. Hrsanback's raincoat on Saturday. It was in our house all day Saturday and until my husband took it [illegible] he would wear it.

MRS. A. E. MARCUS, Sworn for the defendant.

I am a sister of Mrs.Leo Frank. I played cards Saturday night at Mrs.Seligs. Mr.Frank wqs there sitting out in the hall reading, and Mrs.Frank was going in and out of the room. Mr. Frank went to bed after ten o'clock. I noticed nothing unusual about him, no bruises, marks or signs.

CROSS EXAMINATION. He came in one time and told us something funny about a baseball joke. We were still playing when he went to bed.

MRS. M. MARCUS, Sworn for the defendant.

I am no relation of Mr. or Mrs. Frank. I saw Mr.Frank at half past eight or a quarter to nine in the evening on April 26th, at Mrs.Selig's residence. We played cards there. Mr. Frank opened the door for us. He stayed in the hall reading. We played cards in the dining room. He went to bed between ten and half after ten.He appeared as natural as usual. I left the house about twelve o'clock.

CROSS EXAMINATION. We had a game of cards every Saturday afternoon at somebody else's house.

M. J. GOLDSTEIN, Sworn for the defendant.

I played cards Satureay night,April 26th,at Mrs.Selig's house, I got there about 8;15. We played in the dining room. Mr. Frank was sitting in the hall. There was nothing unusual about him, no nervousess or anxiety. There was nothing that attracted our attention. I have never known Mr.or Mrs.Frank to play poker. I should say he went to bed about 10;30. His wife followed about 15 minutes afterwards. I never noticed any marks or bruises about his person.

CROSS EXAMINATION. He came in while we were playing to tell us of some joke he had read,and we asked him to desist as it was distracting us from the game. Frank was reading a magazine which caused him considerable merriment and laughter.

I. STRAUSS, Sworn for the defendant.

I was at the home of Mrs.Selig,Saturday night,playing cards I got there about 10;30.Mr.Frank let me in. While we played he was sitting in the hall reading. I could see him through the door. There was nothing unusual about him. He went to bed immediately

after I got there. His wife went to bed soon afterwards.

MRS.EMIL SELIG,Recalled for the defendant.

(Witness denies categorically that any of the contents of Minola McKnight's affidavit(State's exhibit J)are true.) I have never raised Minola's wages one penny since she has been with me.

CROSS EXAMINATION. I didn't see Albert McKnight at my house on Saturday. He has been to the house two or three times. I was in bed when Mr.and Mrs.Frank went down stairs Sunday morning in response to the ringing of the telephone. Mr.Frank got home about eleven O'Clock Sunday morning and then ate his breakfast. He and his wife went out together. Minola was paid $3.50 a week. I advanced her a week's wages. I don't know what week that was. I didn't pay her anything the next week. The first week I gave her $5.00 and told her to give me the change. She brought $1.00 the next morning,and told me she kept /50¢ which I deducted the next week. I think Mrs. Frank gave her a hat. I don't know when that was. Mrs. Frank has never given her any money to my knowledge.

SIGMUND MONTAG,Sworn for the defendant.

I am engaged in manufacturing stationary. I am treasurer of the National Pencil Company. The company receives its mail at my office,which is two blocks from the pencil factory.Frank comes to my office every day of the year to get the mail and instructions with regard to orders and the business of the factory. He came to my office on April 26,about ten o'clock and stayed about an hour. He talked to me,my stenographer,Miss Hattie Hall,and Mr.Gottheimer, one of the salesman. Up to about a year ago I went to the factory almost every Saturday afternoon. Mr Frank would always be working at his desk on the financial sheet. The telephone in my house is about 30 feet from my bed. I did not hear it ring Sunday morning. My wife was aroused by its ringing and she waked me. The man at the other end asked me if I could identify a girl that was killed in the basement of the pencil factory. I referred him to Mr.Darley who was most familiar with the help in the factory. After breakfast Mr. Frank came to my house. It was a raw,chilly morning. He was no more ner-

vous than we were about the murder when we saw him that morning.I was very much agitated and trembled. My wife commenced to cry and was very nervous. I saw no marks,scratches or discolorations of any sort on his face,and there were no spots on his clothing. I went to the factory that morning and made a general examination,in-cluding the metal room. We saw nothing on the floor. Frank was very much agitated and nervous when he told us about the occurrence. We have a great many accidents in the metal room. They would be brought to the front of the building into the office. I heard that about nine o'clock Monday morning Mr.Frank had been taken to police headquarters. I knew that he had a very limited acquaintance there and I therefore telephoned for Mr.Herbert Haas, my personal counsel and counsel for the pencil company to go down there. Mr.Haas answered that he didn't like to leave home that morning,that his wife was expecting a new arrival,so I sent my automobile after him. Mr.Haas came back and said he was refused admittance to Mr.Frank at the station house,and said he was going to telephone Mr.Rosser. He then telephoned for Mr.Rosser.That was between half past ten and eleven. Mr.Rosser came down to the station house thirty or forty minutes later. I saw Mr.Rosser go upstairs. About forty minutes later Mr.Black and Mr.Haas left police Headquarters with Mr.Frank .I always received the financial sheet on Monday morning. Mr.Frank would bring them over in envelopes. I saw the financial sheet of April 24(Defendant's Exhibit 2) on Monday afternoon about three o'clock. That was after Mr.Schiff called me over the telephone and asked me if I would sanction the employment of the Pinkertons to ferret out this crime,and I told Mr.Schiff to go ahead. I told him and Mr.Darley to help the authorities all in their power to find out the murderer,whoever he might be.

CROSS EXAMINATION. Mr.Frank was well acquaintes with our attorney, Mr. Haas. He was president of the B'nai B'rith. The B'nai B'rith has between four or five hundred members,I should say. When I say that Mr.Frank had a limited acquaintance, I meant that the people around police headquarters did not know Mr.Frank. Mr.Frank did not ask for an attorney. Mr.Schiff told me that Mr.Frank had spoken to him about employing the Pinkertons. Mr. Frank was very nervous,

when he was at my house Sunday morning. He had already been to the undertakers. He told me they had taken him into a dark room and fix flashed on a light, and he said he saw the little girl there. He described how she looked. He said her face was scratched and her eye was discolored, and she seemed to have a gash in her head. Her mouth was full of sawdust and he described her in a general way. He did not call my attention to his being nervous. He did not say anything to me about an attorney or about having been to police headquarters. I don't know whether he had been to police headquarters or not. I authorized the employment of the Pinkertons on Monday. I had not then employed counsel. My sending Mr.Herbert Haas to see Mr. Frank was not employing counsel. I made no trade with Mr.Haas. Don't know who is paying his fee. I have not contributed anything towards it, nor has the Pencil Company. The Pencil Company is employing the Pinkertons. As to whether they have been paid yet or not, they haven't requested their pay. They have sent bills two or three times. I received the reports from the Pinkertons. They came sometimes every day and then sometimes they didn,t for a few days. I got the report about finding the big stick and the pay envelope. I did not request the Pinkertons to keep the finding of the stick and the envelope from the police and authorities. We have little accidents almmst every two weeks in the factory. There was one big accident about a year ago, a machinist Gilbert, had his head bursted open in the metal department. That was about a year ago.The insurance company ordered us to clean up the factory about a week after Mary Phagan's death.

REDIRECT EXAMINATIONSuperintendent Pierce of the Pinkertons told me that his reports would be furnished to the police before they came to me.

TRUMAN McCRARY,c. Sworn for the defendant.

I am a drayman on the streets of Atlanta. I work for the National Pencil Company. I have hauled for them. I have drayed for them most every Saturday for the past three years. I would work on Saturday afternoons until half past three and sometimes as late as five.

I would be sometimes there so late the shipping clerk would be gone. I have never found the front door locked on a Saturday afternoon.I have never seen Jim Conley watching there Saturday afternoon. I have never seen him guarding the door. I have never seen him around the factory at all Saturday afternoon. I have never found the doors to Mr.Frank's inner or outer office locked. Both doors have glass windows in them. Anybody could see through them. I have sometimes found Mr. Schiff working there with Mr.Frank on Saturday afternoon. I did not see Jim Conley at the factory April 26th. I did not tell him to go down in the elevator shaft and ease his bowels. I went into Mr. Frank's office about twelve o'clock on April 26th. Mr. Frank was there.

CROSS EXAMINATION. I did not haul any for the pencil factory on April 26th. I took a sack of hay there. That was about 7.30. I didn't see Mr. Frank upstairs that time. I did not see Jim Conley at all that day. It may have been as late as 8.30 that I reached the factory that day. Mr.Frank was not there. I was paid sometime before 12 o'clock that day. The boxes are piled around in there pretty high around the elevator going down there. There are some pretty large ones, four or five feet high. They are pilled around the stairway. I have never seen them use that door to the Clarke Woodenware space. I have used it once to haul out a lot of trash. No I have never seen Jim Conley sweeping up there Saturday afternoon. There was one Saturday afternoon that I didn't go up there. That was since Christmas. I think it was in April. I went up there every afternoon in January.

D. J. NIX. Sworn for the defendant.

I was office boy at the pencil factory from April 1913, to Oct-1913. I worked there every other Saturday until the first of September, and then every Saturday thereafter. I am 19 years old. Before Sept.1, I worked on Saturdays until between four and six o'clock. ~~On Saturdays after Spet.1, I worked until between 5.30 and 6.~~ I have never missed any days ~~while I have~~ been at the factory. On Saturday afternoons, Mr.frank and Mr.Schiff would be there working.

I would stay in the outer office. I never left the factory on Saturday afternoon. I have never known Mr.Frank to have any women in his office drinking or doing anything else.

CROSS EXAMINATION. I never stayed there every Saturday afternoon in the Summer months. Every other Saturday afternoon then I got off at one o'clock. No I don't know anything about Mr.Schiff and Mr. Frank and others taking women down the alley on Forsyth St. and around the back door. He ~~said~~ did not have any women in the factory when I was there,and I worked every Saturday after the first of September until the first of October. In the Summer I worked every other Saturday afternoon.

FRANK PAYNE. Sworn for the defendant.

I was office boy last Thanksgiving day at the pencil factory. It was snowing that day. I am 16 years old. Mr.Schiff and Mr.Frank were working there in the office that day.Mr.Schiff sent me up on the fourth floor to straighten the boxes up. Jim Conley was there sweeping. He left the factory about 10.30. L left about 11. He had finished his work. I went by the office to get my coat. Mr.Schiff and Mr.Frank were still working. When I left I did not see Conley anywhere about the door. For two months I worked at the factory on Saturday afternoons until 3.30 or four. Mr.Schiff and Mr.Frank would always be working in the office. I have never known him to have any women in there, or see any drinking going on, I would go to dinner about 1 to 2 o'clock. Mr.Frank would go about 12.30 to one and get back about three. I would stay in the inner office all the time. Mr.Schiff sat right across from me in the inner office. I would go to Montag's and stay about ten or fifteen minutes.

CROSS EXAMINATION. I quit work at the factory seven or eight months ago to get a better job. Mr.Schiff was with Mr.Frank every Saturday afternoon I was there. I never went back at nights. I have never seen any beer bottles around there. I don't know whether Jim Conley came back after he left there at 10.30 on Thanksgiving Day. I saw him go down the stairs. I did not look for him as I went down. I did not notice him.

PHILLIP CHAMBERS, Sworn for the defendant.

I am 15 years old. I started working for them Dec.13,1912., as office boy, at the pencil factory. I left there March 29,1913. I stayed in the outer office. On Saturdays I stayed until 4.30 and sometimes until 5 o'clock. I never left before 4.30 on Saturdays. I would go to dinner about 1.30 and get back at 2. Sometimes on Saturdays I would be sent to Montag for 15 minutes, to get the mail. I would sometimes go out to the Bell St. plant to send the payroll there. I would get back at 12 o'clock. I have never missed a single Saturday at the factory while I was working there. Mr. Frank never did have any women there. I never saw any drinking there. I have never seen Dalton come in there. I have seen Jim Conley Sweeping there Saturday afternoon. Snowball would be in there once in a while. I have never known the front door to be locked on Saturday afternoon. After a certain time all the sweepers, including Conley and Snowball, had to leave the factory at noon. Mr. Darley gave them orders thay could not sweep in the afternoon. After that I never saw any of them around there Saturday afternoon. I have never seen anybody watching the door on any Saturday that I was there, or any other day. I have seen Mr. Frank's wife come to his office once. Mr Schiff would be helping him on some of the Saturdays that I would be there. I have never seen Mr. Frank familiar with any of the women in the factory. I have never seen him talk to Mary Phagan at all.

CROSS EXAMINATION. Mr. Frank and I were good friends, just like a boss ought to be to me. I don't know anything about Mr. Frank's telling Conley to come around and not let Mr. Darley see him.

GODFREY WEINKAUF, Sworn for the defendant.

I am superintendent of the Pencil Company's lead plant. Begining with July, 1912, up until the first week in January 1913, I visted the office of the pencil factory every other Saturday, between three and five o'clock. I would stay there about two hours. I would find Mr. Holloway, Mr. Frank and Mr. Schiff there. I never saw any women in the office there.

CROSS EXAMINATION. I never saw Jim Conley there at the factory on Saturday. I am sure I saw Holloway there on Saturday afternoon

CHARLIE LEE, Sworn for the defendant.

I am a machinist at the pencil factory. I remember the accident to Duffy in the metal room.His finger was hurt on the eyelt machine,about Oct.4,1912. It bled freely and the blood spouted out. There was a lot of the blood on the floor. He went down the hall to the office,by the ladies dressing room.There was blood at that point. Gilbert also got hurt in the metal room last year. He was bandaged in the office also. In going from the metal room to the office,you go right by the steps.

CROSS EXAMINATION.I have been with the company two years and four months. Two weeks ago my wages were raised 2½¢ an hour. Mr.Darley raised them. I have not talked to anybody about what I was going to swear in this case. I did not see Gilbert get hurt up there.I saw him after he was dressed. Duffy was hurt in the metal room on the machine opposite Mary Phagan's machine.The Pencil Company took a written statement from me,signed by me,to keep the fellow from suing the company. I saw my signature this morning. I have never told you I signed that statement. The blood was streaming from his finger anddropped all over the floor. The whole floor was bloody. He came out down the hall to the office. He stopped about in front of the dressing room,about three steps from the water cooler and asked me which office to go in. The blood was streaming from his finger while he was standing there,about eight or ten seconds. It dropped just in one place,holding his hand like this. It wasn't cleaned up,they only sweep the floor once a week,that's all the cleaning it gets. I never noticed it after that time. I have never taken any notice whether you can see that blood there now. Duffy was cut right near where those chips were taken up on the floor, It might have been the same place. It was right near there.I wouldn't say it was the same spot or not.

ARTHUR PRIDE (c),Sworn for the defendant.

I worked on the second floor of the factory. On Saturdays I work all over the factory,doing anything that is necessary. Beginning with July of last year I have not missed a single Saturday afternoon at the factory. I [illegible] work until about [illegible] never seen any women come up there and see Mr.Frank,or any drinking going on there, or seen Jim Conley sitting and watching the door.

The employees used the back ~~xxxxx~~ stairs leading from the metal room to the third floor. You can hear the elevator running if the machinery is not running. It makes a roaring noise and you can hear it on any floor. The motor makes a noise, and you can see the wheels moving on the fourth floor. I know Jim Conley's general character for truth and veracity, it is bad. I would not believe him on oath. I wouldn't believe him on oath, because him and his whole family lied to me.

CROSS EXAMINATION. I never associated with jim. No. I aint a high class nigger, but I am a differnet grade from him. He had three or four watches and I bought one and I made him show me a receipt marked paid in full, andhe sold me the watch and after that they come and got him to put him in jail about it, and then his whole family came and siad if I would give the watch back, that they would pay the debt, and I gave the watch back and after they had released him, the family just said they done that to get the watch and they were done with it, and there wasn't any way for me to get it, but he swore to me it was paid for in full. I haven't heard anything else said against him. I never paid any special attention to the elevator during business hour, but you could hear it all the time when the factory wasn't running. It didn't shake the building. You could hear the elevator when the wind blows. You could hear the elevator if the machinery wasn't running even if they are hammering/

REDIRECT EXAMINATION. I haven't missed a single day in five years, that I have been working with the factory. Yes, I say that Jim C Conley forged a receipt on me for a watch. I let him have $4.50 on it, and I never got my money back.

DAISY HOPKINS, Sworn for the defendant.

I am a married woman. I worked in the factory from Oct.1911 to June 1st, 1913. I worked in the packing department on the second floor. Mr. Frank never spoke to me when he would pass. I never did speak to him. I've never been in his office drinking beer, Coco-cola, or anything else. I know Dalton when I see him. I never visted the factory with him, I never have been with him until I went to his

to see Mrs. Taylor,who lived with him then. That was the only place I have ever seen him. I never have been to the factory on Saturday or any other day. I never introduced him to Mr.Frank. There Isn't a word of truth in that. I have never gone down in the basement with this fellow,Dalton. I don't even know where the basement is at all. I have never been anywhere in the factory,except at my work.

CROSS EXAMINATION. I have never been in jail.Mr.W.M.Smith got me out of jail. Spmebody told a tale on me, that's why I was put in jail. I don't know what they charged me with,they accused me of fornication.

REDIRECT EXAMINATION. I never was tried. I never had to pay anything except my lawyer's fee, which I paid to Mr.Wm.Smith. I never was taken to court.

MISS LAURA ATKINSON. Sworn for the defendant.

I have been in Mr.Dalton's company three times. I never met at the Busy Bee Cafe. I have never walked with him to or from the pencil company.I Have never walked home with him.

CROSS EXAMINATION. I worked at the National Pencil Factory two days last month. I have known Mr.Dalton six months. I have been in his company three times. I did not know Daisy Hopkins.

MRS. MINNIE SMITH,Sworn for the defendant.

I work at the pencil factory. I do not know C.B.Dalton. I live at 148 S.Forsyth St. I have never met Dalton or walked home with him. I don't know the man. I know Mr.Frank. I have spoken to him six times in the four years and a half that I worked there.

CROSS EXAMINATION WAIVED.

V.S. Cooper,W.T.Mitchell,O.A.Nix,Samuel Craig,E.L.Patterson, Robert Craig,Ed Craig,T.L.Ambrose,J.P.Birdm and J.H.Patrick and I.M. Hamilton,All sworn for the defendant. Testified that they lived in Gwinnett or Walton County; that they used to know C.B.Dalton before he left Monroe in Walton County; that his general character for truth and veracity is bad,and that they would not believe him on oath.

R.L.Bauer,Sworn for the defendant/

During the Summer of 1909 and 1910, I worked at the National

Pencil Company on Saturdays. Since that time I have worked off and on at the factory on Saturdays doing extra work. I have also been up to the office Saturday afternoons, frequently during the past twelve months. I was there while Mr. Schiff was off on his trip. I was up at the office on the Saturday afternoon before Mr.Schiff went away. Mr. Holloway,Mr.Schiff,Mr.Frank and the office boy were there. I have never seen any women in Mr.Frank's office on the Saturdays I Have been there.

CROSS EXAMINATION. I have always found Mr.Schiff there on Saturday afternoons with the exception of the time when he was off on his trip during January and February. The only specific Saturday afternoons that I remember being at the factory, was the saturdays during the month of January 1913 when Mr.Schiff was off on the road. Got to the factory at three o'clock on the first Saturday in January. I went through the front door of the factory.It was unlocked and the door was open. Mr Holloway was on the second floor in his usual place. Mr Frank was in his office sitting at his desk. I didn't see any stenographer. I stayed there until nearly four o'clock. I have been to the factory on an average of two saturdays every month. On the second Saturday in January, I got to the factory at three o'clock. Mr. Frank,Mr. Holloway and the office boy were there? The front door was open. The inside door was open. Mr. Frank was at his desk, in the inside office. I stayed there about a half or three quarters of an hourmabout half past three or a quarter to four? I talked to Mr. Frank about ten minutes,and the rest of the time I just noticed things around the office. I saw Mr.Frank at the factory the third Saturday in January I was there. I don't know who else was there. I went to inquire about Mr.Schiff who was in the Ohio flood. Mr.Frank was in his office. I remember seeing Mr.Frank in his office on the fourth Saturday in January I called there. He was working in his office. I don't remember seeing anybody else there.

GORDON BAILEY,Sworn for the defendant.

I work at the factory.I am sometimes called"Snowball" I never saw Jim Conley talk to Mr.Frank the Friday before the murder. I have

never,at any time,heard Mr.Frank ask Conley to come back on any Saturday. I have never seen Mr.Frank bring in any women into the factory. I have never seen Jim Conley guarding or watching the door. I have ~~xxxxx~~ seen Jim take newspapers and look at it, but I don't know if he read them or not. I have seen him have papers at the station house like he was reading them.

CROSS EXAMINATIONI was arrested Monday,April 28th,about half past nine. I saw Mr.Frank before I was arrested. He was on the second floor.

HENRY SMITH,Sworn for the defendant.

I work at the pencil factory in the metal department. I work with Barrett. He has talked to me about the reward offered in this case. He said it was $4300,and he thought if anybody was to get it, he was to get it,because he found the blood and hair, and he said he ought to get the first hook at it. He said it six or seven different times.

CROSS EXAMINATION. He would come out of the room counting it off on his hands. He did that two or three times and sort of laughed, counting that imaginary money.

MILTON KLEIN,Sworn for the defendant.

I saw Mr.Frank last Thanksgiving morning at a dance given by the B'nai B'rith at the Hebrew Orphan's Home. I also saw him that same afternoon between half past four and six o'clock. The dance lasted from eight to half past eleven. Mr.Frank helped Mr.Copeland and myself give the dance.We were the Committee in charge.

CROSS EXAMINATION. I was down at the jail to see Mr.Frank when the detectives brought Conley down there. I sent word down that Mr. Frank didn't care to see Conley,that he didn't care to see anyone at that time. He knew that Conley was there. I was the Spokesman for Mr.Frank. He would't see any of the detectives either. Mr.Frank said that he would see Conley only with the consent of his attorney, Mr.Rosser. He said for them to send and get Mr.Rosser. Frank's manner was perfectly natural. He considered Conley in the same light that he considered any of the city detectives. He said he would not see any of the city detectives,or Mr.Scott without the consent of Mr.

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Rosser. He considered Scott as working for the City. He included Scott with the rest of the detectives.Mr.Frank looked very much disappointed because the Grand Jury had just indicted him when he expected to be cleared. Mr.Frank has a great many friends who constantly visited him in jail.

NATHAN COPLAN, Sworn for the defendant.

I remember last Thanksgiving Day was a very disagreeable day. I don't remember whether it snowed. The B'nai B'rith is a charitable organization here composed of young men.They gave a dance out at the Jewish Orphans Home Thanksgiving evening.Mr.Frank had charge of it.Mr.Frank and his wife were there. I got there about eight o'clock. They were there at that time. They stayed there until about ten o'clock.

JOE STELKER, Sworn for the defendant.

I have got charge of the varnishing department at the pencil factory,about sixty people work under me. I saw the spot that Mr. Barrett claimed he had found in front of the young ladies dressing room.It looked like someone had some coloring in a bottle and splashed it on the floor. Chief Beavers asked me to find out whether it was varnish or not.I saw the white stuff on it.It looked like a composition they use on the eyelet machine orface powder. The spots look like some varnish. The floor in the metal room is swept once a week. It is never washed. The spots looked as if it had been made three days before. I would not have noticed it , had not my attention been called to it. The floor is a greasy one. The white stuff looked like it come from the eyelet machine. The alleged blood spots could have been made with a transparent red varnish. If it is that kind of varnish it will soak in and looks something like blood. If it is pigment it will show up right red. They use this kind of varnish in bottles in the metal room. I tried a stain on the floor there and it looked just like that spot that Barrett found.Everybody was nervous and shaky on Monday. The varnish I experimented with soaked in the floor and looked [illegible] spot. I have seen paint all over the floor, it splashes out of the bucket and they

just sweep it up. I was at the undertakers Sunday afternoon two o'clock when Frank was there. Mr.Quinn,Mr.Ziganki,Mr.Darley and Mr. Schiff were there. I looked at the body with Mr. Zykgnke. No one else was present. I have known Jim Conley about two years. His general character for truth and veracity is very bad? therefore,I would not believe him on oath.

CROSS EXAMINATION. Frank came from Brooklyn. I am of no kin to Mr. Frank or any of his people. I do not belong to his society. I have never heard anything said against Conley,except since Frank was indicted. I also heard he was in the chaingang. I saw him in the chaingang on Forsyth st. I saw him with shackles on. I don't know what he was sent up for. I sent him out for 35¢ worth of beer and he filled it half full of water and he denied doing it. I could tell it was filled up by the taste of it. I know he did it because he had a suspicious look about him. That was last Summer. Zyganke helped me drink beer? That's about all the drinking I have ever seen there. At the undertakers Mr. Frank had on a dark suit of clothes. He had no raincoat with him. We went to the undertakers for the purpose of seeing the body. Mr.Frank did not ask me to meet him there. I went in to view the body and then came out. Mr.Frank came there ten minutes after we got there. While we were in there Mr.Frank had come and was speaking to Mr. Darley. I don't know how long I was sitting there? I was too nervous to know. I felt nauseated and nervous before I went in to see the body. When I went in to view the body MR.Frank was standing outside talking with Mr. Schiff and Mr.Darley. Mr.Frank went in to view the body later on, ten or twenty or thirty minutes later. I was sitting down waiting for the rest of the men while he went in there. Zyganke was sitting with me. I don't know whether Mr.Frank went in the room to see the body or not. Mr.Frank was nervous when he got there, and when he came out just the same. Just the same expression he has got on his face now. The room was full of people when Mr.Frank went in there. I went down to the undertakers to see who was murdered. I did not know that she had already been identified as Mary Phagan. I only heard when I got to the

undertakers. I didn't see the impress of the cord on the neck. I just took one look and then came right out again. I saw the discoloration of the eye and that bruise and I sort of felt sick and I walked right out.

REDIRECT EXAMINATION. I am a German and I am accustomed to drinking my beer. I have never trusted Jim Conley after he put water in my beer.

HARLEE BRANCH, Sworn for the defendant.

I work for the Atlanta Journal. I had an interview with Jim Conley on two occasions. On May 31, he told me he didn't see the purse of this little girl. He said that it took about thirty five minutes after going upstairs until he got out of the factory. He said he finished about 1.30 and then went out. He said that Lemmie Quinn got into the factory about 12 o'clock and remained about 8 or 9 minutes.

CROSS EXAMINATION. I am sure about his saying he saw Lemmie Quinn at the factory at that interview. He was in jail when I had that interview. It was a few days after he went through the factory. As to Conley's movements at the factory, I was there a few minutes after twelve. Conley arrived there about 13.30 or 12.15. The detectives told him what he was there for. After a few minutes brief conversation, Conley started telling his story. When he reached the point at the rear left side of the factory, he described the position of the body, and described what he did with the body, and how Mr. Frank helped him. He enacted the whole story and talking all the time. After he had reached the point of disposing of the body, and writing the notes, I found it was time for me to go back to the office and I left. Conley began the enactment of the story a few m minutes after he got there., which was a quarter past twelve, and he went through very rapidly. We had to xxxx sort of trot to kee p behind him. I left the factory at 1.10. In estimating the time Conley devoted to acting and how much to telling the story would be a guess. There is no way of disassociating the time between the two. I didn't attempt to do that. It would be a pure guess because I

no way of dividing the time. I should say that perhaps he was talking and not acting for about fifteen minutes. Of course he was talking all the time that he was acting. I did not say that I thought he was talking half of the time.

REDIRECT EXAMINATION. In going through his performance he walked very rapidly. We were almost on a trot behind him. I was at the factory fifty minutes while he enacted his story. I left him after he had written one note in Mr.Frank's office. He wrote the note very rapidly. It took him about two minutes. He didn't stay in the wardrobe over a minute. He just got in, closed the door and got right out. In approximating the time of his performance I gave a minute to his staying in the wardrobe and two minutes to writing the one note. If you add six minutes to writing the other notes and eight minutes to the time he said he stayed in the wardrobe, that would be four - teen minutes added to the ~~thirty~~ fifty minutes, which would be sixty four minutes for the time of the performance. If you deduct the fifteen minutes, which I saw he was talking, would leave forty minutes net which he took to enact the story.

RECROSS EXAMINATION. That is just an estimate. The only time I had was the time I left my office and the time I got back. Conley got to the factory 12.15 and I left there between 1.05 and 1.10. I saw Conley pick up a paper in the newspaper room and he looked like he was redding it. It had pictures on the front page and I judge he looked at them first, because afterwards he folded it. He had several minutes while I was telephoning.

JOHN M.MINAR, Sworn for the defendant.

I am a newspaper reporter for the "Atlanta Georgian". I visted George Epps Sunday night, April 27th,. I went there to ask him and his sister when was the last time either of them had seen Mary Phagan. George Epps and sister were both present. I asked them who had seen Mary Phagan last, and the little girl Epps said she had seen her on the previous Thursday. George Epps was standing right there and he said nothing, about having seen her Thursday. He said he knew the girl, that he had ridden to town with her in the mornings,

occasionally when she went to work. He said nothing as to having seen the girl on Saturday and coming in on the car with her. I directed my questions to both the children.

CROSS EXAMINATION. I was not seeking evidence for the defendant. There was no defendant at that time. This was on Sunday, the day the body was found. I have been working under the direction of Mr. Clofein, city editor. Clofein visted Frank in jail. At that time Mr. Frank had not been mentioned in connection with the case at all. At the time of the interview with the little girl and the little boy they were both in the room with their father. Their father took me out v there.

W.D. McWORTH, Sworn for the defendant.

I am a Pinkerton detective. I worked for fifteen days on the Frank case. For three days I took statements from the factory employees and on May 15th, I made a thorough search of the ground floor. I found near the front door on the ground floor, stains that might or might not have been blood. All the radiators in the factory had trash, dirt and rubbish behind them. Behind one of the radiators near the Clark Woodenware place, where the partition is, I found much trash, behind the trap door, up against the partition, and on top of the radiator were pipes and about eight or nine lenghths of that rope that they tie pencils with. One length-the only one that came loose-was pulled straight away from the radiator and I saw signs of it having been cut recently with a sharp knife. Among the trash I found papers there dated February, 1911. That rubbish had been there some time, because the rest of the floor around there was clean. About six or eight inches from the left side of the radiator, there was a small pile of dirt and sweepings. When I took Mr Whitfield, another pinkerton detective, back there to show him the spots I had found, we looked behind the radiator and as I was sticking my hand around the dust and dirt, I discovered a pay envelope. (Defendant's exhibit 47). It was covered with granulated dust. I opened it and looked at it and saw the number 186 there. And the first initials of the name and "M" and a "P". I handed it

to Whitfield and said "take it to the door and see what it is". It was pretty dark in there. Right in the same corner, I also found a club,(defendants exhibit 48). It was standing up on the doorway with some iron pipes. The club is used by the dray man as a roller to roll boxes and barrels on. The iron pipes there were used for the same purpose. The satins on the club were either paint or blood, I don't know which. I found this little stick back of the front door (State's exhibit L).

CROSS EXAMINATION. I saw the spots in front of the ladies dressing room. It just looked as if the floor had been stained. There are half a dozen places. There was no difference in appearance between the dark spots by the water cooler and the other spot in the metal room. I did not make any special search on the office floor for a pay envelope. I was looking for the mesh bag under the instructions of Mr.Scott. Mr.Whitfield joined me in the search. In my report to the Pinkertons I reported that I found what I took to be blood satins around the trap door. they were dark discolorations. There were seven of them, averaging about seven inches in diameter. The gas was turned on and I used matches in examining them. I had found the staains first and while Mr.Whitfield and I were back there looking behind the radiator, we found the cord and twine about the radiator. Whitfield was examining the stains when I picked up the envelope which was all rolled up. I found the envelope about three o'clock on May 15,within eight or ten inches of the trap door. The name was written in lead pencil. So far as I know, the envelope has not been changed any since I saw it last. I did not see any "5" on the envelope. We went out to see Mr. and Mrs. Nels Coleman on May 17th,and showed them the envelope. There was no "5" on it at that time. There was no conversation about any five. I had x talked to Mr.Schiff before I saw Mr.Coleman. In my report I stated that the stains might have been bolld as well as stains. I reported the finding of this club to the police 17 hours after finding it. And within four hours thereafter, I had a conference with them about it. I never showed that whip to anybody (State's exhibit L) I didn't

show it to Mr.Black.I showed him the club and the envelope. I turned them over to Mr.Pierce, the superintendent of our agency. I don't know where he is, nor Mr.Whitfield either.

JOHN FINLEY, Sworn for the defendant.

I was formerly master machinist and assistant superintendent of the pencil factory. I have known Mr.Frank about five years. His character was good.

CROSS EXAMINATION. I am now Superintendent for Dittler Bros. They are not related to the Franks. I left the pencil company about three years ago. I have never heard anything about women going up in the factory after work hours. Mr.Frank and I usually left together about 6 o'clock. Mr.Frank went to lunch usually about 1 o'clock. I would sometimes work at the factory all Saturday afternoon.I did that most of the time I was there. The elevator box was kept closed when I was there. I generally kept one key and we kept one key in the office. The rule was to lock it and keep one key in the office. It has been left unlocked. The elevator doesn't make much noise that I know of.It doesn't shake the building,not when I was there. The wheels on the top floor are closed in on the 4th floor. You might be able to see them on the 4th floor if you stand on the west side of the elevator. They didn't make any noise. The power box don't make any noise.

REDIRECT EXAMINATION. The motor makes a tremendous noise. You can hear it and the shafting anywhere in the building.

A.D. GREENFIELD, Sworn for the Defendant.

I am one of the owners of the building occupied by the Pencil Company on Forsyth St. I have owned it since 1900. When we bought the building it was occupied by Montag Bros. They used it as a manufacturing plant. The Clarke Woodenware Company subleased part of the first floor from Montag Bros. They used the front door of Montag Bros. In going in there. We have not put in any new floor on the second story of the building. I have known Mr.Frank four or five years. His character is good.

CROSS EXAMINATION. I have come in contact with Mr.Frank in business ... have seen him twenty or thirty times during the past five years. I have not

contributed anything to any fund for his defence. I have not heard of any such fund.

DR WM. OWENS, Sworn for the defendant.

I am a physician. I am also engaged in the real estate business. At the request of the defence I went through certain experiments in the pencil factory to ascertain how long it would take to go through Jim Conley's movements relative to moving the body of Mary Phagan. I kept the time while the other men were going through with the performance. I followed them and kept the time. Mr.Wilson of the Atlanta Baggage Co/ also kept time with me. Mr.Brent and Mr. Fleming enacted the performance. The performance enacted was as follows: "12.56 o'clock, Conley goes to cotton box from elevator stairs, gets piece of cloth, takes cloth back to where body lay and ties it just like a person that was going to give out clothes on Monday, ties each corner, draws it in and ties it, ties the four corners together, and rund right arm through cloth, went to put it up on his shoulder and found he couldn't get it up on shoulder, it was too heavy, and he carried it ~~back~~ that way on his arm, when close to little dressing room in the metal department, he let the body fall, he jumped, and he was scared and said: "Mr.Frank, you will have to help me with this girl, she is heavy;" Frank comes and runs down from the top of the steps, and after he comes down there, he caught her by the feet, and Conley laid hold of her by the shoulders, and when they got her up that way, they backed, and Frank kind of put her on Conley, Frank was nervous and trembling too, and after walking a few steps, Frank let her feet drop; then they picked her up and went to the elevator and sat her on the elevator, and Frank pulled down the cords, and the elevator wouldn't go, and Frank said: "Wait, let me go in the office and get the key;" and Frank goes in the office and gets a key and comes back and unlocks the storage box, and after that he started the elevator down; the elevator went down to the basement, and Frank said "Come on", and he opened the door that led direct to the basement in front of the elevator, and

carried it out and laid her down, and Conley opened the cloth and rolled her out on the floor, and Frank turned around and went on up the ladder, and Conley carries the body back to where the body was found; Conley goes around in front of the boiler, and notices her hat and slipper and a piece of ribbon;and Conley said:"Mr.Frank, what am I going to do with these things?" and Mr.Frank said:" leave them right there"; and Conley threw them in front of the boiler; Conley goes to the elevator, and Frank come on up and stepped off at the first floor, and Frank hits Conley a blow on the chest which run him against the elevator;Frank stumbles out of elevator as it nears second floor, Frank goes and washes his hands,and comes into the private office, and they sit down in the private office, Frank rubbing his hands on the back of his hair; Frank happened to look out of the door,and said:" My God, there is Emma Clarke and Corinthia Hall;" Franks runs back;Frank says" Come over here,Jim, I have got to put you in this wardrobe;" Frank puts Conley in wardrobe; Conley stayed there quite a while; Frank:"you got in a tight place";Conley: " Yes Sir"; Frank: "You did very well;" Frank goes in the hall and comes back and lets Conley out of the wardrobe; Frank made him sit down; Conley sits down;Frank reaches on table and gets a box of cigarettes and matches, takes out cigarette and match, and hands Conley box of cigarettes; Conley lights cigarette, and commenced smoking, and hands Frank back box of cigarettes, Frank puts cigarettes back in his pocket and takes it out;Frank:"You can have these"; Conley reaches over and takes box of cigarettes and sticks them in his pocket; Frank:" Can you write?" Conley: "Yes sir, a little bit;" Frank takes out his pencil and sits down; Conley sits down at table; Frank dictates notes, Conley taking paper that Frank gave him;Conley writes one note; Frank says:"Turn over and write again:" Conley turns over paper and writes again;Frank:"Turn over again;" Conley turned over again and writes on next page; Frank;" That is all right:"Frank reaches over and gets green piece of paper and tells Conley what to write; Conley writes, Frank then lays it on his desk,looks at Conley

smiling and rubbing his hands, runs his hands in his pockets and pulls out a roll of bills; Frank says:"There is $200000:" Conley takes the money and looks at it a little bit; Conley: "Mr.Frank, don't you pay another dollar when that watch man comes,I'll pay him myself;" Frank:"All right, I don't see what you want a watch for, either; that big fat wife of mine, she wanted me to buy her an automobile, and I wouldn't do it; pause. I will tell you the best way, you go down in the basement, you saw that package that is on the floor in front of the elevator, take a lot of that trash and make up a fire and burn it; Conley:" All right,Mr.Frank,you come down with me and I will go:" Frank: "There is no need of my going down there, and I haven't got any business down there: "Conley:Mr.Frank ,you are a white man and you done it, and I am not going down there and burn it myself:"(pause) Frank: "Let me see that money:" Frank takes money and puts it in his pocket. Conley:"Is this the way you do things?" (pause) Frank turned around in his chair, looks at money, and looks back at Conley, and throws his hands aand looks up: Frank:" Why should I hang, I have wealthy people in Brooklyn;" Conley:"Mr.Frank, what about me?" Frank: "It is allright about you, don't you worry about this thing, you must go back to your work on Monday, like you have never known anything, and keep your mouth shut,if you get caught, I will get you out on bond and send you away". Conley;"That is all right,Mr.Frank." (pause) Frank: " I am going out home; can you come back this evening and do it?" Conley;" Yes sir, I am coming to get my money:" Frank:"Well, I am going home to get my dinner now, you come back here in about forty minutes from now, it is near my dinner hour, and I am going home to get my dinner;picks up money; Conley;"How will I get in?" Frank:"There will be a place for you to get in all right, but listen, if you are not coming back, let me know, and I will take these notes and put them down with the body." "Conley: "All right, I will be back in forty minutes." Conley looks at Frank,Frank looks up, then Conley gets up and stands by

chair and looks down at Frank;Frank grabs scratch pad from typewriter table and starts to make memorandum upon paper, but his hand trembles so he couldn't: Frank gets up to go; Frank: "Now,Jim you keep your mouth shut, do you hear?" Conley: "All right, I will keep my mouth shut,and I will be back here in forty minutes." Conley goes out" It took us eighteen and a half minutes by the watch to go through the movements and conversation,(as above set forth) which Conley says took place between him and Frank on Saturday,April 26th. The experiment was made as rapidly as the dialogue could be read. The eighteen and half minutes did not include the eight minutes that Conley said he was in the wardrobe and also the time it him to write the notes, including the eight minutes he remained in the wardrobe and the ten minutes estimated for writing the notes,the whole performance would have taken 36 1/2 minutes.

CROSSEXAMINATION. We started the experiment at the entrance of Mr. Frank's office at teh top of the stairs. We had the copy of Conley's movements and the conversation in our hands all the time. Mr.Haas and Mr. Wilson read the directions. Mr.Brent took the part of Conley. As they would read out the things that Conley did, Mr.Brent would do them. I went with him all the time. I don't think the giving of the directions lengthened the time very much, because the directions were being given while the enactment of each scene was going on. It wasn't done slowly and deliberately. When they dropped the body,those knots did not come untied. The sack that they carried,to represent the body, contained wet sawdust and cinders, and was supposed to weigh 107 pounds. It was tied up tight. There was only point in the enactment where might have been a loss of time, and that was where Mr.Frank was supposed to have paused in the office, and I suppose five or ten seconds were lost there. Mr. Fleming took the part of Mr.Frank, When they took the body down on the elevator, Mr.Brent, representing Conley, opened the cloth and rolled the corpse out on the floor, on the cloth, then dragged her back to where the body was found. Mr.Brent dragged it back.He simply picked up the sack by the end and pulled it along. He dragged the sack with the enclosed sawdust

weighing about 107 pounds, back. Mr.Brent enacted everything that was supposed to have been done by Conley. Mr Fleming played the part of Mr. Frank. Neither one of these gentlemen are connected with the pencil factory. In putting the cloth around the corpse I think they actually gained time. They did it really faster than it could have been done. Mr.Herbert Haas did most of the reading of the directions. There were no feet hanging out of the ~~sack~~ sack like the body would. As to whether it isn't much easier to handle the sack as it was than it would be to handle a human body in a sack, with the head and shoulders and arms exposed at one end and the feet and the legs up to the knees exposed at the other. I believe you could pick up a body just as quickly as you could a sack. Corpses are pretty hard to handle. Fleming acted nervous and agitated like Frank was supposed to have done. He didn't tremble. I think he gained time there. In picking her up and putting her on the elevator? I think they did that fully as quickly as a person could have taken a body, probably faster. I don't think Mr.Fleming really unlocked the elevator box like Mr.Frank was supposed to do it. He went through the motion. It probably takes longer to actually unlock it than it would to go through the motion of doing it. He probably gained time there. In going down the elevator, I think Mr.Schiff ran the elevator. He was in the building when we got there and let us in. He ran it because none of the rest of us knew how to run it. He brought us back up again in the elevator. That's the only part he took, in the performance. Mr.Brent, impersonating Conley, carried the body out of the elevator. He is a large man and had no trouble carrying 107 pounds. What ever the instructions called for we followed to the letter. Mr. Wilson and I had the paper in our hands and checked Mr.Haas as he read the directions. These directions furnished us were supposed to be Conley's testimony on the stand. It was furnished to us as a copy of the evidence as given by Conley? When we got to the basement I am not sure whether Mr. Brent, impersonating Conley, carried the body or dragged it. It could be dragged as quickly as it could be carried.

I had my eyes on the paper all the time.

Mr. Brent didn't get in the wardrobe,he was too big. He went to wardrobe and we eliminated the time he was supposed to be there. A small man could have got in it. They did not write out the notes. We eliminated that also. Staying in the wrdrobe and writing the notes was not included in the eighteen and a half minutes it took. It was said that Conley's testimony was to the effect that he was in the wardrobe eight minutes. The notes were supposed to have taken from 12 to 16 minutes to write,but we didn't add that in our estimate. Mr. Wilson and I set our watches together when the performance started. The only thing that we omitted from the entire performance was writing the notes and concealing Conley in the wardrobe. Yes,I wrote that letter. I wrote it partially at the instance of myself,and partially at the instance of Mr. Leonard Haas,my personal attorney.

REDIRECT EXAMINATION. I wrote that letter as a matter of conscience. It is as follows: " To the Grand Jury of Fulton County,W.D.Beattie Foreman,Gentlemen: Among a number of people with whom I have discussed the unfortunate Phagan affair, I have found very few who now believe in the guilt of Leo M.Frank,and I have felt a deep conviction growing in my heart that a terrible injustice might be inflicted upon an innocent man. While we are all still mystified by the published evidence now at command.,I am impelled by a sense of duty to ask that you carefully weigh the testimony of all persons connected with the crime,and the accumulating evidence,and if further indictments are warrented,that the Honorable Body,of which you are the Foreman will not hestiate to finf them. If I am exceeding the privilege which perhaps might be accorded citizens in this addressing your Honorable Body,it is your privilege to ignore what I have said. Whatever may be your conclusion in the matter,I wish to assure you in thus addressing you,that I am discharging a duty which has weighed heavily on my conscience,the performance of which I could not forego. I do not even know Mr. Frank,and have no personal interest in the case whatever. Very truly,your fellow-citizen,William Owens."

The pantomine that we enacted at the factory was the story as told by Jim Conley on the stand.

ISAAC HAAS? Sworn for the defendant.

I know Leo M. Frank for over five years. His character is very good. I did not hear my telephone ring on Sunday morning, April 27th. My wife heard it. The telephone is twenty two feet from my bed.

CROSS EXAMINATION. My wife waked me up when she answered the telephone.

A.N. ANDERSON, Sworn for the defendant.

I work at the Atlanta National Bank. That is the original pass book of Leo M. Frank (Defendants exhibit 50)

CROSS EXAMINATION. I don't know that that's the only Bank account that he had. He may have had others. Yes, the pencil company does business with the Atlanta N ational Bank. I don't know anything about how much money they had on April 26. Mr. Frank's bank book was balanced August 11. These are all the checks that he drew (defendant's exhibit 51) during the month of April

REDIRECT EXAMINATION. These cancelled checks are the ones that have been paid since April 1, 1913. Mr. Frank had drawn no others since then.

RECROSS EXAMINATION. On the first of April he had $111.13. on the 18th, of April he deposited $15.00. That is all he deposited that month, and these checks were drawn against that $111.13 and $15.00.

R.P. BUTLER. Sworn for the defendant.

I am the shipping clerk of the pencil company. I am familiar with the doors leading into the metal room. They are wooden doors, with glass windows. There is no trouble looking through those windows into the metal room, even when the doors are closed. The glass in the door is about fifteen inches by eighteen inches. Any one of ordinary height can see through them easily.

CROSS EXAMINATION. The doors are six feet wide together. The passage way from the elevator back to the metal room is ten feet wide with th exception of that part where we have some boxes piled up, where it is about six feet wide. The boxes go to the ceiling on the one side. It is not particularly dark there. I measured the width

of the metal room doors. They were six feet wide exactly from jab to jab. The doors are usually open. If any one came up the stair case and turned to the office, they could see through the metal room doors. The floors of the metal room are very dirty. I don't know if the window are clean, but you can see through them.

I.U. KAUFFMAN, Sworn for the defendant.

I made a drawing of the Selig Residence on Georgia Avenue, in this city, showing the kitchen, dining room, the reception room, parlor and passage way between the kitchen and dining room. The mirror in the dining room is in the side board as shown on the plat (defendant's exhibit 53). It is fourteen feet from the kitchen door to the passage way in the dining room and the passage way is a little over two feet. Standing in the back door of the kitchen room against the north side side of the door, I could not see that mirror, because of the partition between the passage way and the dining room. On the south side of the kitchen door you would have less view than on the north side and could not see the side board wherein the mirror is located at all. It is 175 feet from the Selig home to the corner of Washington and Georgia Avenue and 271 feet from the Selig home to corner of Pulliam St. and Georgia Avenue, as shown on the plat(defendants exhibit 53.) I made a plat of the National Pencil Company plant on Forsyth St.(Dfefendant's exhibit 61.) The page one of this plat is the basement. Page two is the first floor; the deminsions of the elevator shaft are six by eight and back of the trap door, as shown on the plat, is a ladder going to the basement. The size of the trap door is 3 feet by 3 feet and three inches. It is a 136 feet from the elevator shaft to the place where the body of the young lady is said to have been found, and 80 feet from thr front of the elevator shaft to to the trash pile and 90 feet from the elevator shaft to the boiler, and 116 feet from the elevator shaft to the colored people, s toilet. It is 135 feet from the elevator to the back stair way. The chute as shown on the page 2 of the plat, is five feet wide and 15 or 20 feet long. It empties upon a platform in the basement about eight or ten feet

from the back steps and about 32 feet from where the body is said to have been found. The back door is 165 feet from the elevator and the total length is 300 feet. I saw no furniture, except a bunk with old dirty sacks, which were very filth. The floor of the basement is dirt and ashes. The trash pile is 57 feet from where the body was ~~is~~ found and it is 21 feet from where the body was found to the colored toilet, and 42 feet from where the body was found to the back door. The angle from the colored toilet to where the body was found ~~is~~ 43 degrees and the partition in the basement cuts off the vision. I should say that it would cut off about half of the body. It is very dark in the basement. These diagrams are accurate, made according to accurate instruments. On the first floor there is an open areaway, extending to the west end of the building. It has a door about five feet wide. There are two toilets in this open areaway, about 90 feet from the front. This part of the first floor is directly above where the young ladies body was found. The size of the packing room is shown page 2 of the plat, is about 33 by 80. The inner office of Mr. Frank is 12 1/2 by 17 1/2 . When the safe is open, you can see nothing from the inner office to the outer office, or the outer office into the inner office, unless you stand up, and the safe is about 41/2 feet high. A person five feet and 2 inches tall could not see over the safe. There are no shades in the windows and a person on the opposite side of the street couls look into the office. It is 150 feet from Mr. Frank's desk to the dressing room. There is no view from Mr. Frank's desk to the stair way to the first floor. Looking from Mr. Frank's desk towards the clock's you can see about one fourth of the East clock. You cannot see the bottom of the stairway which leads from the second to the third floor. The door ways in the metal rooms are about six feet wide. They have glass in them. It is ten feet from the door to this dressing room. It 36 feet from the dressing room to the place marked "lathe" and 37 feet from the lathe to the point where Conley said he found the body. It is 19 feet from ~~where~~ the place where Conley found the body to the ladies toilet.

CROSS EXAMINATION. There are ashes and cinders along the walk in the basement. Mr. Schiff showed me the point where the body was found. I made every calculation from the point that Mr.Schiff showed me. I made my diagrams within the last month. About two feet of the wall prevents seeing from the desk in Mr.Frank's office to the stair way. You can only see a part of the East clock and dosn't take in the West clock at all.

REDIRECT EXAMINATION. There will be no difficulty about one person going down the scuttle hole back of the elevator.

RECROSS EXAMINATION. If the Washingtos St. car had passed the nearest corner, it would be at Pulliam and Georgia Avenue.

FURTHER EXAMINATION. Sitting near the back door,he could not see the mirror.

FURTHER EXAMINATION. I do not know what the arrangement was in the Selig home on April 26.

J.Q.ADAMS,Sworn for the defendant.

I am a photographer. I took photographs of the Selig home at 68 E.Georgia Avenue from the inside and the outside of the back door,looking toward the passage way that leads in the dining room. The door into the dining room was open,for me.This view (exhibit 62) is view made from the outside of the rear door. I was about three feet outside of the door. The picture does not extend to the mirror,or the sideboard. You could not see them from the outside. This (Exhibit 63 for defendant) is a photograph taken standing directly in the door. You could not see the mirror with the naked eye or in the picture. The following are views taken at the pencil factory (defendants exhibit 64) is a picture of the safe,showing a view of the safe,standing just inside of the door of the office, looking toward the inner office. Defendants exhibit 65 is another view of the safe and office made standing in door. You could not see any part of Mr.Frank's desk in inner office,or a man sitting at desk,or a telephone or a window,defendants exhibit 66 is a photograph taken on the outside of the outer office, looking toward the inner office, with the safe door open. You could not see

into the inner office, to Mr. Frank's desk, or a man sitting there. Exhibit 67 for defendant shows the pay window. Defendant's exhibit 68 shows foot of the elevator shaft, showing the rubbish and barrels in and adjacent to the elevator shaft. Defendant's exhibit 69 shows the basement looking to the back door to the elevator shaft. Defendant's exhibit 70 represents the corner of the place where the body was found, the body being found just about the left corner, behind the partition. Defendant's exhibit 71 shows the exit to the back door of basement. Defendant's exhibit 72 shows the entrance on the street floor. The elevator is behind the partition on the right of this photograph. Defendant's exhibit 73 shows the elevator and trap door and stairway on the first or street floor. Defendant's exhibit 74 shows the place where Conley says he found the body. The defendant's exhibit 75 shows the place where the cotton sacks were kept. Defendant's exhibit 76 is a view of the plating room. Defendant's exhibit 77 is a view of the metal room showing where the floor was chipped by the detectives in front of the dressing room. On the left is the ladies dressing room. Defendant's exhibit 78 shows the lathe. Defendant's exhibit 79 shows a view from the third floor looking to the second floor. You can see a man walking from the metal room towards the elevator, just as is shown on this picture. Defendant's exhibit 80 shows the elevator box on the second floor. Defendant's exhibit 81 shows the ~~xxxxxxx xxxxxxxxxxxxxxxxxxxxxxx~~ wheels at the top of the fourth floor. Defendant's exhibits 82 and 83 show views of the metal room. Defendant's exhibit 84 shows the doors of the metal room. These doors have glass in them. They do not lock. You can push them together, but the locks do not catch. Defendant's exhibits 85 and 86 show the metal closet with the door open and closed. All these photographs are fair representations and are as accurate as a photograph can be. I have had 20 years experience. A slight change in the mirror would have made the corner of it visible and would have thrown part of the room in view.

CROSS EXAMINATION. The mirror could be turned so as to see a reflection in the hall. These photographs were made about a month ago.

231 Sitting in the back door you could not see very near the mirror,

at the Selig residence.

T. H. WILLETT, Sworn for the defendant.

I am a pattern maker. I made the pattern of Pencil Factory from a blue print. This is the model (Exhibit 13 for defendant).

CROSS EXAMINATION. The height of the floors is not made according to scale. The floor plan is a correct representation, according to the blue print. The windows in Mr. Frank's office were not put in by me.

REDIRECT EXAMINATION. I was given no instructions except to follow the ground floor plan as shown on the blue print. This is the blue print, (defendant's exhibit 85), from which I made the model.

C.W. BERNHARDT, Sworm for the defendant.

I am a contractor and builder. This (defendant's exhibit 52) fairly represents the back porch of the Selig home, as well as the first floor of the house. Standing in the kitche door you can't look through the passage way and see into the mirror. If you move up a little distance you can see about 18 inches of the mirror. You could see no body sitting on the south side of the table in the dining room, or on the north side of the table, in fact you cannot see the table at all, or the door leading from the dining room to the sitting room. Sitting in a chair against the jab of the kitchen door, you could not see a man in that mirror. You would have to be a foot or more inside of the door before you get any view of the mirror at all.

CROSS EXAMINATION. Taking a point between the door and the back porch and a point about the pantry you could see about half of the mirror. The floor in the dining room showed that this furniture had been standing in the same position for some time. You could see the top of a man's head if he were sitting at the table. If the mirror were turned, you might get a view. It depends on the angle of reflection. It is easy to move the furniture. The mirror is rigid in the furniture.

H.M. WOOD, Sworn for the defendant.

I am the Clerk of the Commissioners of Roads and Revenues of Fulton County. Standing in the back kitchen door of the Selig residence, that enters on the back porch and undertaking to look into the dining [illegible], I could not see the [illegible]

of the dining room at all, Moving up into the kitchen, near the passage way, I could see nothing but the top of one chair by looking in the mirror.

CROSS EXAMINATION. The view that I could get of the mirror would depend upon where I stood in the kitchen. I can only speak from the conditions that existed as I saw them as to the arrangement of furniture.

JULIUS A. FISCHER, Sworn for the defendant.

I am a contractor and builder. I looked at the house of the Selig's at 68 E.Georgia Ave. Standing in the kitchen door, I had very little view of the sideboard. You could see possibly an inch in the mirror. You can get no view from the mirror. The test was made sitting down and standing up. The mirror is four feet high from the floor. You could get no view of the dining room table, nor see a man sitting at the table. The mirror is fixed straight up and down. The views you get depend on the angle of the mirror. If properly adjusted you might see a man standing up.

CROSS EXAMINATION. I had the mirror turned around, but I couldn't see anything. The mirror was too high from the floor. I don't know what the conditions were on April 26th.

J. R. LEACH, Sworn for the defendant.

I am division superintendent of the Ga.Rwy & Power Co. I know the schedule of the Georgia Ave. line and the Washington St. line. The Georgia Ave. line leaves Broad and Marietta on the hour and every ten minutes. It takes two minutes to go from Broad and Marietta to the corner of Whitehall and Alabama. It takes 12 or 13 minutes to run from Broad and Marietta to the corner of Georgia Ave. and Washington St., about ten minutes from Whitehall and Alabama to Georgia Ave. and Washington St. The Washington St. car leaves Broad and Marietta two minutes after the house and every ten minutes. It gets to the corner of Whitehall and Alabama St. in two minutes and it takes ten minutes from Whitehall and Alabama to Washington and Georgia Ave. and ten minutes from Glenn and Washington Sts. into center of the city.

CROSS EXAMINATION. The man come in ahead of the schedule times. I suspended a man last week for coming in ahead of time. It happens

ahead of time when they are going to be relieved. It isn't a matter of impossibility to keep the men from coming in ahead of time, but we do have it. The English Ave. line is a hard schedule. It frequently happens that the English Avenue car cuts off the River car, and the Marietta car. I have seen the English Ave. car cut off the Fair St.car, which is due at five after the hour.

K. T. THOMAS, Sworn for the defendant.

I am a civil engineer. I measured the distances from the intersection of Marietta and Forsyth St.,to the pencil factory on Forsyth St. it is 1016 feet. I walked the distance,it took me four and a half minutes. I measured the distance from the pencil factory to the intersection of Whitehall and Alabama, it is 831 feet. I walked the distance and it took me 3½ minutes. I measured the distance from the pencil factory to the corner of Broad and Hunter it is 333 feet. I walked it in a minutes and three quarters. I walked at a fair rate.

CROSS EXAMINATION. I could have walked it more rapidly and made it in three minutes. A man would have to walk slower than I walked to take him 6 minutes to go from Marietta and Forsyth to factory.

L. M. CASTRO, Sworn for the defendant.

I walked from the corner of Marietta and Forsyth St.to the upstairs of the National Pencil Factory on So.Forsyth St. at a moderate gait. It took me 4½ minutes. I walked from the same place in the pencil factory to the corner of Whitehall and Alabama Streets, and it took me three minutes and twenty seconds. I walked from the corner of Hunter and Broad Streets to the same place in the pencil factory and it took me one minute and a half.
NO CROSS EXAMINATION.

PROF. GEO. BACHMAN, Sworn for the defendant.

Prof.of Physiology and Physiological Chemistry Atl.Col.Phys.&Surgeons.Bomar says it takes 4 hours and a half to digest cabbage.That's for the cabbage to pass from the stomach into the intestines. The gastric digestion takes 4 hours and a half. That is the time is is supposed to be in the stomach.More digestion occurs in the small

The pancreatic juice helps digestion mostly in the small intestine. It consists of water in organic salts of which sodiam carbonate is the most important, and a number of ferments. The ordinary time that it takes wheat bread to pass out of the stomach is not less than three hours. The time for a meal consisting of cabbage cooked for about an hour and wheat biscuit to pass out of the stomach depends a great deal upon the mastication of the food. The times given above have reference to the most favorable conditions. If the cabbage is not well chewed, it would take considerably longer. It is impossible to tell exactly how long. There is no regular rules about how long such substances as cabbage and wheat bread will be found in a person's stomach. It depends upon too many different factors. Even in a healthy normal stomach the digestion might be arrested or retarded at any stage, as by strong emotion such as fear and anger or violent physical exercise, or the state of mastification. The Pyloris prevents passage of food to the intestines except when it is liquid and when there is free hydro chloric acid in the stomach. If solid food touches the pyloris it closes immediately and nothing passes for a time. If there were particles of cabbage in the stomach unmasticated in which you can see part of the leaf they are liable to keep the contents of the stomach in it seven or eight hours or longer by coming into contact with the pyloris. The liquid contents would pass into the intestines. The solid part would be retained for a very long time. The pyloris works mechanically, and unless a chemist knows to what extent those unchewed portions have affected the pyloris he can give no reliable estimate as to how long such food has been in the stomach. Its a guess. The acid in the stomach is hydro chloris, consisting of one atom of hydrogen and one of chlorine. It combines with proteim, only one percent of cabbage is protein, and only about one percent of the cabbage is acted upon in the stomach; the balance is acted upon in the small intestines, and in the mouth, where digestion begins to a certain extent. The salts in the saliba act on the stanch in the cabbage.

This cabbage (State's Exhibit G) I don't think has been masticated at all so far as these pieces are concerned. There can be no doubt that these pieces would retard the digestion and the passage from the stomach into the samll intestines. The presence of such cabbage would make it very uncertain as to how long before the food would pass out of the stomach. I could'nt say,and I don't think anybody could say, how long cabbage and wheat bread in such condition would stay in the stomach.As far as wheat bread and water are concerned the acidity of the stomach with reference to hydrochloric acid may go between 40 and 60 degrees, which is the average hight of the acidity. With wheat bread in the same shape of biscuit it would take the acidity about an hour to reach the height. With cabbage we don't know how long it would take it to reach that height. The acidity may rise very quickly and decline slowly. It would not necessarily take it one half of the 4 1/2 hours necessary for digestion. When the acidity reaches a certain height it begins to decend. The longer it stays in the stomach it decreases. If you find 32 degrees in the body of a corpse you cannot tell whether it is on the ascending or decreasing scale. There is do data on how long it would take the acidity to reach its height in case of cabbage. If a gallon of the juices of a corpse are taken from the body and a gallon of embalming fluid, which is 8% farmalin, is put in, it would destroy the ferments in the pancreatic juices. There would be no way to tell by testing such a body whether any of that pancreatic juice had been in the lower intestine or not, for the only way to tell that is to find the action of the ferment, and if the formalin has destroyed it you can't tell anything about that at all. After formalin has been in the body it is difficult to tell how leng food has been in the stomach. Formalin destroys the pepsin in the stomach. I never heard of hydrochloric acid being measured by drops before , because its a vapor. If I investigated a stomach and found wheat bread and cabbage, some of which was in that condition (State's Exhibit G) and approximately a drop and a half or two drops of combined hydrochloric acid, the stomach being taken during a post mortem on a subject that has been interred nine or

or ten days, a gallon of the liquids of the body having been taken out and a gallon of embalming fluid put in, it, and ~~xfixdxfurthur~~ if I furgher found the acidity of the stomach to be 32 degrees and practically no pepsin, and practically nothing in the lower intestine, the body having been embalmed with formaldehyde, it would be impossible for me or any other chemist or physician to tell anything about the time it had been in the stomach. The acidity of the stomach does not suffice to show it, because it may have been higher that that. There may have been considerable free hydrochloric acid, and that may have disappeared after the body had been embalmed, or even before that, some of it will combine with the walls of the body and some passes out. Not finding anything in the lower intestine would be of no value at all, because the ferments would be destroyed entirely.

CROSS EXAMINATION. If I took the contents of an absolutely normal stomach and made a positive test and found starch there, and there was nothing to indicate that anything was stopped up, and the intestines six feet below, were absolutely clear, and nothing has moved out of the stomach, that would show me nothing as to how far digestion had pressed, for starch is found in the stomach from the begining of digestion until the last particle of bread has passed out of the stomach and that may be three or four hours. Medical man are able to compile tables showing how long it takes to digest cabbage and other things by testing for protein, but not for starch, because proteins are the only subtances which combine with the hydrochloric acid and which are digested in the stomach, and that can be done only within certain limits and not with mathematical cartainty. If the starch digestion is not interrupted, maltose would be founf in the stomach, but if I made a test and found starch, but no maltoes, I could express no opinion unless the food had been well masticated, and unless I knew how soon after the food entered the stomach that free hydrochloric acid appeared, because free hydrochloric acid stops the starch digestion. Finding starch and

and no maltose would not necessarily mean that digestion had not progressed very far, because free hydrocholoric acid may have appeared soon after the food entered the stomach and stopped starch digestion. In the average case I would say the starch had not been in the stomach very long. In an ordinary normal stomach you might find maltose before the food reaches the stomach, even in the mouth, it depends on mastication. If I did not find it in the mouth or stomach I could not say how long digestion had progressed. I was told that these samples (State's Exhibit G) were taken from a normal stomach within from 40 to 60 minutes after they were taken in it, I would answer that they might have been in the stomach 7 or 8 hours. When it is said in the books that it takes 4 hours to digest cabbage it means cabbage which has been well chewed, not cabbage of that kind. (State's Exhibit G)

REDIRECT EXAMINATION. Cabbage, like this (State's Exhibit G) could pass from the body whole. Before it could be told with any degree of certainty how long after eating a meal of bread and cabbage 32 degrees of hydrocholoric acid would be found numerous observations would have been made.

DR. THOMAS HANCOCK?. Sworn for the defendant.

A doctor for 33 years. Engaged in hospital work 6 or 7 years. Have treated about 14,000 cases of surgery. Have examined the private parts of Leo M. Frank and found nothing abnormal. As far as my examination disclosed he is a normal man sextually. If a body is embalmed about 8 or 10 or 12 hours after death, a gallon of the liquids of the body removed, a gallon of embalming fluid, containing 8% formaldehyde is injected, the body buried and a post mortem examination made at the end of 9 or 10 days, and the doctor finds back of the ear a cut which is opened and which extends to the skull about an inch and a half ling and finds on the inside of the skull no actual break of the skull, but a slight hemmorage under the skull corresponding to the point where the blow had been delivered and there is

no interference with the brain or any pressure on the brain, no doctor could tell that long after death whether or not the wound would have produced unconsciousness, because the skull may be broken and considerable hemorage and depression occur without any loss of memory even. There is no outside physical indication of any sort that a man could find that can tell whether it produced unconsciousness or not. If the body was found 8 or 10 or 12 hours after deahh with that wound and some blood appears to have flowed out of the wound, that would have been inflicted before or after death, the blood might flow from a wound inflicted after death from one to six or eight or ten hours by gravity. If the wound was made during life by a sharp instrument I would expect it to bleed. A live body bleeds more than a corpse. If under the above conditions only a visual examination of the lungs was made and no congestion was found, it could not be stated with certainty whether or not the person died from strangulation. If in such a subject I removed the stomach and found in it wheat bread and cabbage partly digested like that (State's Exhibit G), and 32 degrees of acidity in the stomach and very little liquids or anything in the smaller intestine and feces some 5 or 6 feet further down, and if the stomach was taken from the body 9 days after death after it had been embalmed with a preperation containing 8% formaldehyde, neither I nor anybody else could give an intelligent opinion of how long that cabbage and wheat bread had been in the stomach before death. The digestion of carbo-hydrates begins in the mouth. The more cabbage and wheat bread are masticated the more easily it is digested. Cabbage chewed like that (State's Exhibit G) would take longer to digest. It is liable to stay in the stomach 3, 4 or 5 hours, and longer if it is stopped up by the pyloris, and when food is not chewed thoroughly, it causes irritation and constriction, and so the stomach would retain the food longer. Some times cabbage passes out of the body whole. No dependable option could be given as to the time that cabbage had been in the stomach from the conditions of acidity or

lack of acidity, starch or the lack of starch, maltose or the lack of maltose. The conditions are too variable. A great many things retard digestion, such as excitement, anger and grief . Formaldehyde stops all fermented processes of the pancreatic juices, and after a body was embalmed with it I would not expect to find the pancreatic juices. It also destroys the pepsin, so that 10 days after death in the case of a body embalmed with formaldehyde no accurate opinion could be given as to how long the cabbage (State's Exhibit G) had been in the stomach. Each stomach is a law unto its self. Cooked cabbage is more difficult to digest than raw cabbage. I recently made tests with one man and four women with normanl stomachs, giving them cabbage and whear bread, and removing it from the stomach a little later to determine how the contents of the stomach looked. The first woman, age 22, (Defendant's Exhibit 88 A) ate loaf bread and cabbage, chewed it well and vomited it 60 minutes later. She ate it at 12 o'clock approximately. It took her 9 minutes to chew it. None of them were supposed to have eaten any thing since 6.30 o'clock that morning, but she had drunk some chocolate milk at 9.30, and that gives this specimen the chocolate brown color. The next one, (Defendant's Exhibit 88 B) has in it the hot water AND THE ENTIRE VOMIT and embalming fluid added to it, that is formaldehyde. This cabbage was not well chewed, and looks like it did before it was eaten. She ate it at 5 minutes after 12, and it stayed in her stomach 45 minutes. The next one (Defendant's Exhibit 88 D) was a man 35 years old. He did not chew his well. He ate it in 5 minutes. I took it from his stomach 1 hour and 15 minutes later. It was not digested. This next one (Defendant's Exhibit 88 C) was a woman, aged 21. she chewed it well, and held it from 30 to 45 minutes. There seems to be something like tomatoes in it which she ate at 6.30 that morning. This last one (Defendant's Exhibit 88 E) was woman, aged 35. She ate cabbage and bread? She did not chew it well, and kept it 2 hours and 28 minutes. You can see cabbage in there. No dependable opinion

resulting from the condition of the contents of the stomach irrespective of acidity or the other chemical qualities as to how long babbage and wheat bread were in the stomach can be given where particles like that (State's Exhibit G) are found. Where a young lady 13 or 14 years old died, her body is embalmed as above described, and a post mortem performed 9 or 10 days after death, and the physician finds the epithelium detatched from the walls of the vagina in several places nothing being visible to the naked eye and he takes several parts of the wall of the vagina away and examines them with a microscope and discovers that the blood vessels are congested, that is, there has been a hemmorhage in a number of instances the blood from those microscopic vessels getting into tissues, the removal of the epithelium could be accounted for by the fact that there has been a digital examination the day after death by inserting the fingers, but in that length of time I would expect the epithelium to shed off. Finding the epithelium missing in several places or separated from the wall of the vagina would not indicate any violence done to the subjects in life. The condition of the blood vessels above described I would expect to result from other causes than violence. The embalming might force the blood through the small capillaries. If the subject had just had her menstrual period and that had come back on her at about the time of death or before, that would account for those distended blood vessels and hemorrhage; but even if violence caused them, you could not tell how long before death that violence had been inflicted, ot that it had been inflicted within from 5 to 15 minutes before death. Death by strangulation might have an effect on those blood vessels. If there was no more damage than what I have described I would say certainly there was no violence on the youn woman. A bruise or discoloration could be produced on the eye or face anytime before the blood coagulated utterly, which may be as long as 8 or 10 or 12 hours after death. A blow on the back of the head can discolor the eye. Death can be produced by a

blow on the outside of the head by concussion without any appreciable leison on the outside of the head.

DR.WILLIS F. WESTMORELAND, Sworn for the defendant. DIRECT EXAMINATION.A practicing physician for twenty eight years, general practice and surgery. A professor of surgery for twenty years,and formerly president of the State Board of Health.If the body of a girl between thirteen and fourteen years old was embalmed about ten hours after death,after taking out a gallon of fluid and putting in a gallon of embalming fluid,of which 8% is formaldehyde and the body is buried and nine or ten days after,upon a post-mortem examination a cut an inch and a half long cutting through to the skull in some places was found by the ear,and the skull was opened and on the inside of the skull no actual break of the skull was found,but a little hemmorhage under the skull corresponding to this point where the blow had been delivered and no pressure on the brain was caused, and no injury to the brain occurred,it would be impossible to tell whether or not that would have produced unconsciousness before death, Skull may be fractured without producing unconsciousness. Death may be produced by a blow on the head that leaves very little outward signs. From looking at such a wound without any knowledge of the amount of blood lost,one could not tell whether it was inflicted before or after death. One could not tell from looking at a wound of that sort from which direction it was inflicted.(In answer to question as to whether he had any personal feeling against Dr.Harris,witness answered "no" but that he had preferred charges with State Board of Health, charging Dr.Harris with professional dishonesty.) A blount surface can produce a wound that would look like a cut. If in the case of the same patient the stomach was taken out and in it was found wheat bread and cabbage,some of the cabbage looking like that(State's Exhibit G), and thirty two degrees of combined hydrochloric acid and substantially nothing in the small intestine,and feces some five feet away, it would be impossible to form a reliable opinion that cabbage [illegible] other data, that would be found by looking at the stomach like or

ten days after death. Many things retard digestion. Much depends upon the particular stomach,and its affinity for particular foods. There is a cycle of acidity and in the progress of digestion that increasses, and they later it goes down. Food that is not thoroughly emusified will remain in the stomach indefinately. Cabbage like that (State's Exhibit G) and wheat bread might remain in the stomach until the process of digestion is complete, which ordianrialy would be from three and a half to four hours. They might pass through the body un-digested. A formaldehyde embalming preperatinn would destroy the pancreatic juices,and also the pepsin in the stomach. The probability is that some of the hydrochloric acid and maltose found upon an examination of the stomach in such a case would in no way determine how long food has been in the stomach. If upon the post-mortem above described,it was found that the epithelium had beem so effected that it had been removed from the wall of the vagina in several places,and upon a misroscopic test of the wall of the vagina it was found that some of the small blood vessels had congested blood in them,these facts would not necessarily indicate violence of any kind during life, it being also known that that had been a digital examination by the physician just after death and before embalming,and that the physician perfroming the post-mortem had removed the wall of the vagina with his hand and scissors. Any epithelium can be very easily stripped after death. The digital examination could have stripped it. So could the removal for purposes of post-mortem examination. If the subject had had a munstrual period a day or two before death, and she was founf in the act of menstruating at the time of death this would account for the congested blood vessels,and it would also make the epithelium much easier to strip. Even if an opinion could be expressed as to violence before death,it would be impossible to say that it occured from five to fifteen minutes before death. From an examination of the private parts of Leo M. Frank,he appears to be a perfectly normal man. A black eye

could be inflicted after death. As long as the blood id not coagulated. A lick on the back of the head could produce a black eye. CROSS EXAMINATION. There are sexual inverts who are absolutely normal in physical appearance. If I had a subject where there was a blow on the head, going practically to the skull, with no injury to the brain, and the face was livid, the tongue hanging out, with deep indentation in the neck, the flesh pushed out of place, with blue nails and lips, I would say that death was produced by strangulation, in the absence of further facts. A blow on the eye could produce a swollen condition after death. Even assuming that the doctor who went into the uterus and vagina with his fingers was very careful and did not rupture or injure the parts or cause dilation, and if the microscopical examination showed a dilation of the blood vessels of the vagina, discoloration of the walls, and swelling of the parts, the menses could have brought about this condition, and it would not necessarily be due to violence. Menstruation would not produce discoloration except there would be an increased reddening on account of the increased amount of blood. This change of color will be found wherever Epithelium was, in the uterus and in the vagina. It would produce swelling wherever the mucous membrane was. A doctor could not look at cabbage in various stages of digestion and venture an opinion as to how long it had been in a woman's stomach. Doctors do not know, even approximately how soon after a stomach receives a certain substance before hydro-chloric acid is found in a free state. It may be delayed for hours , it may be found earlier? Digestion had no fixed rule at all. The usual rule is the hydro-chloric acid is found within a range of about half hour. The time when it begins to descend depends upon the character of the food in the stomach and as to how the glands are acting.

REDIRECT EXAMINATION. The human tongue could not produce any signs of violence in the vagina. Where there is a skull wound an inch and a half long cutting through the little arteries like the wound

described above,it would bleed and if the body lay in one place 30 or 40 minutes, there would be bleeding and if the body id picked up and carried about 40 feet and dropped at another place I would expect to find blood there. Skull wounds bleed very freely, and there would be blood wherever the body was.

DT. J. C. OLMSTEAD, Sworn for the defendant.

Practicing Physician for 36 years. Given the facts that a young lady 13 or 14 years old died and 8 or 10 hours after death the body was embalmed with a preperation containing 8% formaldehyde, and the body is exhumed at the end of 9 or 10 days, and a post-mortem examination shows a wound on the left side of the back of the head about and inch and a half long, with cuts through to the skull, but no actual fracture to the skull, but a hemorrhage under the skull corresponding to the point where the blow was delivered, with no injury to the brain,it would ~~impossible~~ not be possible for a physician to determine whether or not that wound produced unconsciousness before death. Such a wound could have been made within a short while after death. It is impossible to tell from the mere fact of discoloration whether an eye was blackened before or after death. If the post-mortem made on the same subject 9 or 10 days after death showed upon an examination of the contents of the stomach a mixture of wheat bread and cabbage like this (States Exhibit G), it bein possible to distinguish a cabbage leaf, and 32 degrees of acidity, it would not be possible to determine from these facts or any other chemical facts that might be found there how long that had been in the stomach with any degree of accuracy. It is impossible to tell when hydro-chloric acid begins to be secreted in a given case. The hydro-chloric acid follows a curve; as a rule it ordinarily begins slowly until it reaches a certain point and then gradually goes off accordingly to the character of the food and the amount in the stomach. After death free hydro-chloric acid and pepsin do not remain in such a state in the stomach that you could tell 9 days afterward the exact time of death. The hydro-chloric acid disappears after death, and neither

it nor the pepsin would be present in any degree 9 or 10 days after death. Embalming fluid destroys the pancreatic juices so that it would be impossible to find them. Babbage like that (State's Exhibit G) is liable to obstruct the opening of the pyloris, and to delay digestion. Food of that character might remain in the stomach undigested for 10 or 12 hours irrespective of the acid found there. If shortly after death a doctor makes a digital and visual examination of the vagina, opening the walls of the vagina with his hand, and finds no signs of violence and then 9 or 10 days after death a post mortem examination shows the epithelium detatched from the walls of the vagina in a number of places, and a microscope shows on parts of the vagina removed from the body that the blood vessels are congested, this may be due to menstruation or the natural gravitation of blood to those parts and is not necessarily indicative of violence. Manipulation of the membrane would account for the displacing of the epithelium. The use of embalming fluid would make a diagnosis of violence utterly unreliable. Strangulation might result in a distension of the blood vessels. The entire pelvic vessels are always more or less congested during menstruation. No one could make a digital examination of the vagina of a corpse without disturbing the epithelium. It would be impossible for a doctor finding those conditions in the vagina by means of a microscope 9 or 10 days after death to tell that that violence had been inflicted from 5 to 15 minutes before death.

CROSS EXAMINATION. There are medical tables showing that wheat bread digests in about 3 1/3 hours and cabbage in about 4 1/3 hours. If cabbage cooked in the same way and bolted down in the samw way. is taken from the stomach of a living person within 30 or 50 minutes after having been eaten and is found in a similar condition to that of cabbage taken from the dead person's stomach 10 days after death, that would not necessarily mean that the latter cabbage had been in the stomach an equal length of time.

DR. W. S. KENDRICK, Sworn for the defendant.

I have been a practicing physician for thirty five years. I was Dean of the Atlanta Medical College. I gave Dr. Harris his first position there. If a young lady between thirteen and fourteen years of age died and a post mortem examination was made within eight or ten hours after death, by a physician who makes a digital and visual examination to determine whether there as any violence to the vagina or not, and inserts his fingers for the purpose of deciding, and the body is embalmed, and after nine days it is disinterred and another post mortem performed and the physician performing the post mortem takes a half dozen strips and sees nothing with his naked eye by way of congestion, but by the use od a microscope finds that some of the epithelium is stripped from the wall of the vagina, I don't think that the finding of the epithlium stripped from the wall would indicate anything unusual. I don't think that would indicate any act of violence. A females menstrual periods brings about congestion and hemorrhages of the blood vessels every time. The congestion gradually subsides within two or three days. That would not be any indication of violence, nor could you tell how long before death the violence had been in flicted. If a young lady had a wound on the back of the head about an inch and a hald long cutting to the skull and the skull was open and a small hemorrhage was found, ~~that did not involve pressure on the brain~~ and the brain itself was not injured, I am postive that no man examining the body nine or ten days after ~~commitxhaxexaxyxhingxway sfxtaxiingxnhathaxxxhathady~~ death could have anyway of telling whether that wound would produce unconsciousness or not. It would be a pure conjecture if he said anything on that subject. Skulls are sometimes fractures with out unconsciousness. Each stomach is a law itself. It is a known fact that some stomachs will digest different substances quicker than others. I don't think there is an expert in the world who could form any definate idea by either

chemical analysis of the liquids of the stomach or by the condition of the cabbage lodged in the stomach as to how long it had been in the stomach.

CROSS EXAMINATION. I am not a specialist of the stomach, but I am and have been teaching diseases of the stomach and all these cases come under my jurisdiction. Dr. Westmoreland is a surgeon, not a stomach specialist. Dr. Hancock is not a stomach specialist. If you find starch granules in the stomach undigested and cabbage undigested and thirty two degrees of hydrocholoric acid in the stomach and no dextrose and no maltose, the small intestines for six feet absolutley empty, the sides and glands of the stomach all normal, I would not have an opinion as to how long that cabbage was in the stomach for the reason that each case will order itself. Yes, there are certain general principles dealing with these matters. Hydrocholoric acid appears early during digestion and in small quanities, and goes up. The main things in the stomach are pepsin and hydrocholoric acid. As soon as a piece of cabbage or bread gets into the stomach the hydrocholoric acid begins to attack it and works until it has a clear field and leaves nothing in the stomach, and thereafter the hydrocholoric acid descends. I have made no effort whatever to find out how rapidly hydrocholoric acid descends and ascends. I should think though that whenever you find no hydrocholoric acid the process of digestion is ended and that if you find undigested things in the stomach and hydrocholorci acid in a small degree that the process of digestion had not finished. That's the general rule. That does not apply in all cases. For instance, I can't digest cabbage at all. It will put me in bed. Each stomach is a law unto itself, so far as digestion goes any statement to the contrary is incorrect. There are certain basic laws that apply to most people. I haven't read a work on digestion in ten years. If there be four different stages of digestion, I think it would be impossible for an expert to tell

by an examination what stage of digestion certain things were in. There are so many exceptions to the rule. As to whether the cabbage had been digested or not, if whole pieces of cabbage were there I could tell, but if you could not find the cabbage either with the naked eye or the micrescope, I would say that it had been digested. I don't know how long it takes an ordinary stomach to digest turnips. If a 13 year old child ate cabbage and bread on Saturday and her body was found that night about three o'clock, with the tongue out,deep indentations in the neck, a small flow of blood from a wound in the back of the head, a discolor of blood over her pantlets, one of the drawers legs torn, the stocking supporter torn loose, rigor mortis had set in since 16 to 20 hours, all blood had settled down in that part where gravity had taken it according to the way the body was lying and the small testines was clear six feet below the stomach, the stomach was normal, and there was no mucous and every indication was that the digestion was progressing favorably and this cabbage was found with the naked eye in the stomach and unmistakeable evidences of undigested starch granules and thirty two degrees of hydrocholoric acid, I say emphatically that no man living in my judgement could say how long that cabbage had been in the stomach. If Mary Phagan was alarmed concerning her surroundings, or knew that certain facts were upon her, digestion then and there would have almost been completely arrested. If she lived six or eight hours after this alarm, I say that no digestion could have c continued up to the time of her death.Any kind of mental or physical excitement would largely arrest digestion,probably completely. I could tell by looking into the stomach that day but if I examined that ten days afterwards, and found the cabbage in that state and I had said that death or excitement had arrested its digestion I would consider that I had stated one of the greatest absurdities of the day. I don't believe it is possible to tell a thing in the world of the contents of the stomach od a person that had been dead six or eight or ten days. Yes, that looks like cabbage(States ExhibitG)

REDIRECT EXAMINATION. That cabbage dosen't look (State's Exhibit G) as if it had been chewed at all. Cabbage chewed that way would be hard to digest.

JOHN ASHLEY JONES, Sworn for the defendant.

I have known Mr. Frank about a year and eighteen months? His general character id good.

CROSS EXAMINATION. I am resident agent for the New York Life Insurance Company. I don't know any of the girls at the pencil factory. I have never heard any talk of Mr. Frank's practices and relations with the girls down there. Mr. Frank has a policy of insurance with us. it is our custom to seek a very thorough report on the moral hazard on all risks. The report on him showed up first class, physically as well as morally. I went to him in January 1913, and tried to write him additional insurance and on April 8th, I went to the factory to take his application, where I met him and his wife. After a thorough examination of him by our physician and a very satisfactory report, covering his moral reputation, we issued him a standard policy. I have never heard of Mr. Frank going out to Druid Hills and being caught there, but it was the business of our inspector to find out that and he certainly would have not issued such a policy if he had founf it out. Two or three of us in the office signed a long letter to the Grand Jury in the interest of justice. Mr. Robert L Cooney, Mr. Hollingsworth, Mr. Clark and Myself signed it. We decided this was a matter of persecution. I think Mr. Cooney started it. No I have never heard of Mr. Frank's kissing girls and playing with their nipples on their breasts. I have never known Mr. Blackstock. I never heard that Mr. Frank would walk into the dressing room when the girls were dressing, nor that he tried to put his arms around Miss Myrtis Cato and tried to shut the door on her, or going in the dressing room with Lula McDonald and Rachael Prater, nor that Mrs. Pearl Darlson about five years ago threw a monkey wrench at him when he caught put his hand on her and held money in one hand? I have never seen any nude pictures hanging in

his office,although I have been there a number of times. I have never heard that he smiled and winked at young girls.

REDIRECT ~~CROSS~~ EXAMINATION. This is the letter I wrote to the Grand Jury: Mr.W.D.Beatty, Atlanta,Ga. My Dear Sir: Without having the slightest intention of interfering in any way in matters which do not concern me, I believe the interest which any good citizen has in impartial justice warrants my saying that the business men to whom I have talked, commend very strongly the attitude of the Grand Jury in its disposition to at least investigate the merits of the situation as regards the negro Conley in the present matter which has interested the City of Atlanta so much that it is not necessary to describe it,and I sincerely hope that the Grand Jury will go into the matter exhaustively, knowing from the character of several of its members with whom I am acquainted that,to the best of their ability, the right thing will be done."

Dr LEROY W. CHILDS,SWORN for the defendant.

I ~~am a surgeon~~. If a person dies and the body found three o'clock in the morning, rigor mortis not quite complete, embalmed the next day about ten o'clock, the body disinterred nine days later and a post mortem made, and a wound is found on the back of the head behind the ear, almost two and a quarter inches long going through the skull, there was perhaps a drop of blood under the wound, no pressure on the brain, no fracture of the skull, it would be impossible to determine absolutely at that time whether or not that wound produced ~~uncon~~unconsciousness. You might hazard a guess. The presence of the blood on the skull would have no effect ~~,~~ it it the force that produced the drop of blood that is material . . It would be purely a guess to say whether that produced unconsciousness or not. The wound would bleed if inflicted within an hour after death and would have the same appearance as if inflicted just before death. With such a wound it would be a guess for a doctor to say whether it was inflicted just immediately before death, or

within an hour or two after death. Such a wound could be afflicted and a person remain perfectly unconscious. Fractured skull does not necessarily produce unconsciousness. Cabbage is a carbohydrate. It is considered the hardest food to digest among carbohydrates, because it has so much cellulose,which is woody fibre. The older the cabbage is the more cellulose it has. Cabbage gets its digestion in the mouth. That cabbage (State's Exhibit G) has not been masticated thoroughly. They have been swollowed almost whole. Raw cabbage is easier digested than cooked cabbage. Cooked cabbage is the most indigestible form of it. It is the ptyaline in the saliva that acts on the cabbage in the mouth. It acts on the carbohydrate part of the cabbage. The carbohydrate digestion ceases after it leaves the mouth until it reaches the small intestines. The only thing the stomach does is the churning movement by muscular action . As soon as gastric juice of the stomach strikes the cabbage it neutralizes the ptyalin and renders it inactive. It stops any further digestion of the carbohydrate. The balance of the digestion of the cabbage takes place in the small intestines by the pancreatic juices. The shortest time for boiled cabbage to pass into the small intestines is four and a half hours after it is eaten. The stomach does not digest cabbage. A person may swallow cabbage it will out of him whole completely undigested, and it will appear less changed that that appears.(State's Exhibit G) Phsychic influences will retard digestion as excitement, fear,anger,also physical or mental exercise. Substances may be in the stomach quite a while and show very li tle evidences of digestion. Each stomach has its own percuilarities. If a human body is disinterred at the end of nine days and the stomach is taken out and among the contents you find cabbage like that (State's Exhibit G) and fragments of wheat bread slightly digested, you could not by looking at the cabbage hazard an opinion as to how long before death that had been taken into the stomach I don't think it is possible to state within a period of hours how long that cabbage had been in the stomach.

I have seen cabbage less changed than that cabbage you exhibited to me (State's Exhibit G) that has remained in the stomach 12 hours. Bread and cabbage would not begin to pass out of the stomach until 2 1/2 to three hours. A blow on the back of the head could blacken the eye. IT would be perfectly possible for the epithelium of the vagina to be ruptured by the fingers in making a digital examination it would br more liable to rupture it ten hours after this than immediately before this. Decomposition destroys the epithelium. It is a very delicate membrane. Decomposition developes very rapidly on such epithelium. In cases of death by strangulation all the mucous membranes throughout the body are congested by blood. It is not unusual to find those blood vessels congested where death is by strangulation. In such a case I would expect to find congestion in the vagina, especially if the person had just had her monthly periods. Menses may be brought back by excitement. Violence would not be necessary to produce the conditions of congestion of the blood vessels that you have stated. The digital examination would be sufficient violence to produce the changes in the epithelium that you have stated. The congestion of the blood vessels could be entirely accounted for by natural causes, or from death by strangulation. If the epithelium stripped in some places and the blood vessels are found congested under the micriscope, there is no possible way to determing if violence had caused it instead of natural causes, unless there is a sign of bacterial inflamation. It would be impossible to tell how long violence was inflicted before death, whe re the body is interred nine days after death. I could not hazard a guess within two days of the time. I think I might in two weeks.

CROSS EXAMINATION. The amount of digestion in the mouth depends on the amount of mastication in the mouth. If the food id bolted there is no digestion. I am not familiar with Dr. Crittendon's table. If he states that boiled cabbage is easy to digest as raw cabbage he is at issue with the generally accepted authorities. Normal

stomachs have certain idiosyncracies. In normal stomachs is supposed to go along certain stipulated rules. You find free hydrocholoric acid in any stomach that has food at any stage of digestion. As to whether you could ever find free hydrocholoric acid in the stomach immediately after taking Ewald's test breakfast, ~~xx~~ would depend entirely on the state of the glands, and how long previous digestion had been in the stomach. As to the total acidity in a stomach after such a test, that is for a laboratory man. If you take cabbage out of a stomach like that (State's Exhibit G) the size of the stomach is normal, no obstruction to the flow of the stomach, and you find hydrocholoric acid combined to about 32 degrees, no free hydrocholoric acid that the starch of the wheat bread is slightly digested, and the state of the starch corresponddes exactly to the state of the cabbage, I don't think you could tell inside of two hours or an hour and a half as to how long these things have been in a normal stomach. I have taken cabbage from a stomach by forced emesis twelve hours afterward and ~~it did not~~ show as much digestion as this cabbage (State's Exhibit G). The patient had a normal stomach, but the cabbage produced indigestion. That is the only experiment I have ever made with cabbage. If the little girl was found 16 to 20 hours after she was murdered, and there is a wound on the back of the head, with a small blood clot nine days after the thing happened, and 16 to 20 hours after her death the blood underneath the hair is still moist and there is a deep indention in the neck, showing where a cord had been put around the throat and the tongue is out and the face livid and the nails blue and the lips blue and an injury to the wind pipe, I would say that the blow on the head did not cause death.

ALFRED LORING LANE, Sworn for the defendant.

I am a resident of Brooklyn, N.Y. I have known Leo Frank about 15 years. I knew him four years at Pratt Institute, which we both attended. I also knew him after he returned from Cornell University. His general character is good.

PHILIP NASH, Sworn for the defendant.

I live in Ridgewood, N.J. I am connected with the N.Y. Telephone Company, in New York City. I knew Leo Frank four yeas at Pratt Institute. I was in his class. His general character is good.

RICHARD A WRIGHT, Sworn for the defendant.

I live in Brooklyn, N.Y. I am a consulting engineer, with offices in New York City. I knew Leo Frank four years at Pratt Institute. I also knew him three years at Cornell. His general character is good.

HARRY LEWIS, Sworn for the defendant.

I live in Brooklyn, N.Y. I am a lawyer. I was formerly Assistant District Attorney of brooklyn. I have known Leo Frank about twelve years. I have been a neighbor of his until he came south. His general character is good.

HERBERT LASHER, Sworn for the defendant.

I live in New York State. I manage my father's estates. I knew Leo Frank at Cornell University, during the years 1903,4,5, 6. I was in his class, and we roomed together for two years. His His general character was very good.

CROSS EXAMINATION. He associated with the finest class of students at the university. I kept up a corespondence with him a couple of years after he left Cornell.

JOHN W. TODD, Sworn for the defendant.

I reside in Pittsburg. I am Assistant purchasing agent for the Crucible Steel Co. I attended Cornell University with Leo Frank. I knew him for years drung the time I was in College. I am the life treasurer of our class. His general character was good.

PROF. C. D. ALBERT, Sworn for the defendant.

I am professor of machine designs in Cornell University. I have held that chair for five years. I knew Leo M. Frank for two years while he attended the university. At that time I was Instructor in mechanical laboratory, and as such I came in contact with him? His character was very good.

PROF. J. E. VANDERHOF, Sworn for the defendant.

I am foreman of the foundry at Cornell University. I knew Leo Frank for two years when he attended the university. His character was good.

CROSS EXAMINATION. I have been in Cornell 25 years. As to what caused me to take any special notice of Leo Frank I came in contact with him every alternate day while he was there. I know the characteristics of the boys very well. No, I cannot tell what Frank did when he was not in the class room.

V. H. KREIGSHABER, Sworn for the defendant.

I live in Atlanta. I have known Leo Frank for about three years. His general character is good.

CROSS EXAMINATION. I did not come in contact with him frequently. I am a Trustee of the Hebrew Orphans Home and Mr. Frank is also. I met him once a month there. I don't know how long he has been on the board. I have met him there probably twice. He also came quite frequently to the Orphans Home with his uncle, before he was elected to the board. I did not come in contact with him socially.

M. F. GOLDSTEIN, Sworn for the defendant.

I practice law in Atlanta. I have known Leo Frank about three and a half years. His character is very good.

CROSS EXAMINATION. We used to live on the same street together I would see him nearly every day. I would see him at the Progress Club a few times every month. During the last two years, he was the next ranking officer to me in the Lodge.

DR. DAVID MARX, Jewish Rabbi, and R. A. SONN, Superintendent of the Hebrew Orphans Home, being sworn for the defendant, testified that they had known Leo Frank very well ever since he came to live in Atlanta and that his character was good.

ARTHUR HEYMAN , Sworn for the defendant.

I practiced law about nineteen years in Atlanta. I have known Leo Frank for three or four years. His general character is good.

CROSS EXAMINATION . I have been with him seven or eight times in three years. I have been with him alone, I suppose, five or six times, probably for 15 or 20 minutes at a time. I have never heard any reference made to his relation with the girls in the factory.

MRS. H. GLOGOWSKI , Sworn for the defendant.

I keep a boarding house in this city. I have known Mr. Frank more than three years. He and his wife boarded with me for seven months. His character is good.

MRS. ADOLPH MONTAG, Sworh for the defendant.

I am a sister of Mr. Sig Montag. I have known Mr. Frank five years. His character is very good.

CROSS EXAMINATION. I Have heard of his character through the ladies he has lived with. Mrs Meyers has told me how nice he always was to her. My husband has always spoken well of him. I have heard a great may people speak well of him. I heard his uncle speak well of him. My husband has told me what a fine, intelligent gentleman he was.

MRS. J. O. PARMELEE , Sworn for the defendant.

My husband is a stockholder in the National Pencil Company Mr Frank's general character is very good.

CROSS EXAMINATION . I have seen Mr. Frank at the jail twice. I have only come in contact with him once at the factory. I am a member of the Board of Sheltering Arms, and I have heard a great deal of Mr. Frank in matters of charity and in a social way. I have heard different people speak of him, a great many people. I have heard the Liebermans, the Montags, the Haases, Mrs Bauer, Mr. Parmele and the employees at the factory speak of him.

MISS IDA HAYS, Sworn for the defendant.

I work at the pencil factory on the fourth floor. I have known Mr.Frank for two years. His general character is good. I have known Conley for two years. His general character for truth and veracity is bad. I would not believe him on oath.

CROSS EXAMINATION. Conley borrowed money and promised to pay it back, but he didn't do it. We would get it after awhile. He tried to borrow money from me, but I refused to let him have it.

MISS EULA MAY FLOWERS, Sworn for the defendant.

I work on the second floor of the pencil factory. I have known Mr.Frank for three years. His general character is good. I have known Conley for two years. His general character for truth and veracity is bad.

CROSS EXAMINATION. His borrowing money and not paying it back is one thing. He has promised and he has never paid back anything he has ever borrowed from me. I had Mr.Gantt take it out of his envelope. I have never met Mr.Frank anywhere for any immoral purpose.

MISS OPIE DICKSON, Sworn for the defendant. I

I have worked at the pencil factory for 17 months. Mr. Frank's general character is good. I have never met Mr.Frank for any immoral purpose. I have known Jim Conley ever since I have been at the factory. His general character for truth and veracity is bad. I wouldnot believe him on oath.

CROSS EXAMINATION. I know Mr.Darley and Mr.Wade Campbell. I don't rememberif I was with them on the night of April 26. I don't remember where I was.

MRS. EMMA CLARK FREEMAN, Sworn for the defendant.

I have worked at the pencil factory over four years. Mr. Frank's general character is good. I am a married woman. I have known Conley ever since he has been at the factory. His general character for truth and veracity is bad., I would not believe him on oath.

CROSS EXAMINATION. .I have never heard any suggestion of any wrongdoing on the part of Mr.Frank, either in or out of the factory.

ry. I was forelady at the factory for about three years.

MISS SARAH BARNES, Sworn for the defendant.

I worked at the pencil factory over four years. His character is good. I have never heard anything bad.He has been the best of men. CROSS EXAMINATION. No one has talked to me about what I was going to swear. I have told Mr.Arnold what I have told here. I never went with Mr. Frank for any immoral purpose anywhere.

MISS IRENE JACKSON, Sworn for the defendant.

I worked at the pencil factory for three years. So far as I know Mr.Frank's character was very well. I don't know anything about him. He never said anything to me. I have never met Mr. Frank at any time for any immoral purpose.

CROSS EXAMINATION. I am the daughter of County Policeman Jackson. I never heard the girls say anything about him,except that they seemed to be afraid of him. They never would notice him at all. They would go to work when they saw him coming. Miss Emily Mayfield and I were undressing in the dressing room once when Mr.Frank came in the door. He looked,turned around and walked out. He just came to the door,pushed it open.He smiled or made some kind of face. Miss Mayfield had her top dress off and had her old dress in her hand to put it on. I told Mr.Darley I would not quit unless my father made me,and he said if the girls will stick to Frank they won't lose anything.I heard some remarks two or three times about Mr.Frank going in the dressing room on different occasions, but I don't remember anything about it.The second time I heard of his going in the dressing room was when my sister was laying down there. She had her feet on a stool. She was dressed. I was in there at the time. He just walked in,and turned and walked out. Mr.Frank walked in the dressing room on Miss Mamie Kitchens,when I was in there. He never said anything the three times he walked in when I was there. The dressing room has a mirror and a few lockers for the forelaides. That's the only thing that I have ever seen Mr. Frank do,go in the dressing room and stare at the girls. I have heard them speak of other times when I was not there.

REDIRECT EXAMINATION. My father made me quit, after the murder. There are two windows in the dressing room opening on Forsyth St. I think there had been some complaints of the girls flirting through those windows. I have heard of some of the girls flirting through the windows. The orders were against the girls flirting through the windows. Mr. Frank never came into the room at all, he pushed the door open and just looked. My sister and I were both dressed when Mr. Frank looked in the door. The other time that he came in I was fixing to put on my street dress. I was not undressed.

RECROSS EXAMINATION. I don't know if Mr. Frank knew the girls were in there before he opened the door or not. It was the usual hour for them to be in there. He could have seen the girls register from the outer office, but not from the inner office. I have never heard any talk about Mr. Frank going around and putting his hands on the girls. I have never heard of his going out with any of the girls. My sister quit at the factory before Christmas. I have never flirted with anybody out of the window. I have heard them say they didn't want the girls to flirt around the factory. I have heard Mr. Frank say that to Miss McClellan, after she told him that she knew some of the girls flirting.

MISS BESSIE FLEMING, Sworn for the defendant.

I worked as stenographer at Mr. Frank's office, from April, 1911, to December, 1911. Mr. Frank's character was unusually good.

CROSS EXAMINATION. I am just talking about my personal relations with him. I have never seen him do anything wrong there in the factory. He never made any advances to me or anyone else. I worked right in the same office with him. The foreladies came to the office the other girls did not very much. I never did see any flirting. I never heard about any. Mr. Frank worked on his financial sheet in the afternoons, he didn't have time Saturday morning. I didn't stay there very often on Saturday afternoons, but I knew that he didn't have time to do it Saturday morning. I saw him on Saturdays during the mornings making out the financial sheet. The girls work by the hour and piece work. She has a right to go in there when she wants to dress to go out.

MISS MATTIE THOMPSON, Sworn for the defendant.

been there three years. Mr. Frank's general character is good. I have never heard anything against him. I have never met Mr. Frank anywhere or at any time for any immoral purpose. I have made complaint about girls flirting out of the windows with the men on the outside. After seven o'clock, the girls are not supposed to be in the dressing room. There is no toilet or bathtub in the dressing room. Ther is no lock on the door.

CROSS EXAMINATION. They were all complaining up there on the fourth floor about the girls flirting out of the window, and some of us elderly ladies put a stop to it by reporting it to Mr.Darley The girls were not fast, but they would flirt. Mrs.Carson, I and some of the other ladies reported it to Mr. Darley last Spring, about a year ago. The girls simply said they were standing at the windows flirting out of the windows with men in the street. Girls did not go into the dressing room to rest, they would go to change their clothes before work time, and after finishing work. I have never heard any talk about Frank ~~xxxxxx~~ taking a girl off in a ~~dark place and putting his arms around her.~~

MISS IRENE CARSON , Sworn for the defendant.

I worked for 15 months on the fourth floor of the pencil factory. I have known Mr. Frank during that time. His character is good. I am a sister of Miss Rebecca Carson, and a daughter of Mrs.E.H. Carson. I was with my sister on Whitehall St. On April 26 and recollect seeing Mr. Frank there. I have never met Mr.Frank at any time or place for any immoral purpose.

MRS. J.J. WARDLAW , Sworn for the defendant.

I I worked at the pencil factory four years. I worked on the fourth floor. Mr. Frank's character is good. I have never met Mr. Frank at any time or place for any immoral purpose.

CROSS EXAMINATION. I have never heard of any improper relation of Mr. Frank with any of the girls at the factory. I have never heard of his putting his arm around any girl on the street car, or going to the woods with them.

MISS EMILY MAYFIELD, Sworn for the defendant.

I worked at the pencil factory last year during the summer of 1912. I have never been in the dressing room when Mr.Frank would come in and look at anybody that was undressing.

CROSS EXAMINATION. I work at Jacob's Pharmacy. My sister used to work also at the pencil factory. I don't remember any occasion when Mr.Frank came in the dressing room door while Miss Irene Jackson and her sister were there.

MISSES ~~VELMA HAYS? MINNIE FOSTER?~~ ANNIE OSBORNE, REBECCA CARSON, MAUDE WRIGHT, and MRS. ELLA THOMAS, All sworn for the defendant, testified that they were employees of the National Pencil company; that Mr. Frank's general character was good; that Conley's general character for truth and veracity was bad and that they would not believe him on oath.

MISSES MOLLIE BLAIR, ETHEL STEWART, CORA COWAN, B.D. SMITH, LIZZIE WORD, BESSIE WHITE, GRACE ATHERTON, and MRS. BARNES all sworn for the defendant testified that they were employees of the National Pencil Company, and work on the fourth floor of the factory; that the general character of Leo M. Frank was good; that they have never gone with him at any time or place for any immoral purpose, and that they have never heard of his doing anything wrong. ANNIE HOWELL, Velma Hayes, Minnie Foster

MISSES CORINTHIA HALL, LILLIE M. GOODMAN, JENNIE MAYFIELD, IDA HOLMES, WILLIE HATCHETT, MARY HATCHETT, MINNIE SMITH, MARJORIE McCORD, LENA McMURTY, MRS. W.R. JOHNSON, MRS. S.A. WILSON, MRS. GEORGIA DENHAM, MRS. O. JONES, MISS ZILLA SPIVEY, CHARLES LEE, N.V. DARLEY, F. ZIGANKI, and A.C. HOLLOWAY, all sworn for the defendant, testified that they were employees of the National Pencil Company and knew Leo M. Frank, and that ~~his~~ general character was good.

D.I. MacINTYRE, B. WILDAUER, MRS. DAN KLEIN, ALEX DITTLER, DR. J.E. SOMMERFIELD, F.G. SCHIFF, ALL. GUTHMAN, JOSEPH GERSHON, P.D. McCARLEY, MRS. M. W. MEYER? MRS. DAVID MARX, MRS. A. I. HARRIS

M. S. RICE, L. H. MOSS, MRS. L. H. MOSS, MRS. JOSEPH BROWN, E.E. FITZPATRICK, EMIL DITTLER, WM. BAUER, MISS HELEN LOEB, AL. FOX, MRS. MARTIN MAY, JULIAN V. BOEHM, MRS. MOLLIE ROSENBERG, M. H. SILVERMAN, MRS. M.L.STERNE, CHAS. ADLER, MRS. R. A. SONN, MISS RAY KLEIN, A. J. JONES, L. EINSTEIN, J. BERNARD, J. FOX, MARCUS LOEB, FRED HEILBRON, A. C. HOLLOWAY, MILTON KLEIN, MRS. J. E. SOMMERFIELD, NATHAN COPLAN, all sworn for the defendant, testified that they were residents of the City of Atlanta, and have known Leo M. Frank ever since he has lived in Atlanta; that his general character is good.

MRS. M. W. CARSON, MARY PIRK, MRS. DORA SMALL, MISS JULIA FUSS, R. P. BUTLER, JOE STELKER, all sworn for the defendant, testified that they were employees of the National Pencil Company; that they knew Leo M. Frank and that his general character is good.

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STATEMENT OF LEO M. FRANK.

Gentlemen of the Jury: In the year 1884, on the 17th day of April, I was born in ~~Quero~~ Paris, Texas. At the age of three months, my parents took me to Brooklyn, New York, and I remained in my home until I came South, to Atlanta, to make my home here. I attended the public schools of Brooklyn, and prepared for college, in Pratt Institute, Brooklyn, New York. In the fall of 1902, I entered Cornell University, where I took the course in mechanical engineering, and graduated after four years, in June, 1906. I then accepted a position as draftsman with the B. F. Sturtevant Company, of High Park, Massachusetts.. After remaining with this firm for about six months, I returned once more to my home in Brooklyn, where I accepted a position as testing engineer and draftsman with the National Meter Company of Brooklyn, New York. I remained in this position until about the middle of October, 1907, when, at the invitation of some citizens of Atlanta, I came south to confer with them in reference to the starting and operation of a pencil factory, to be located in Atlanta. After remaining here for about two weeks, I returned once more to New York, where I engaged passage and went to Europe. I remained in Europe nine months. During my sojourn abroad, I studied the pencil business, and looked after the erection and testing of the machinery which had been previously contracted for. The first part of August, 1908, I returned once more to America, and immediately came South to Atlanta, which has remained my home ever since. I married in Atlanta, an Atlanta girl, Miss Lucile Selig. The major portion of my married life has been spent at the home of my parents in law, Mr. and Mrs. E. Selig, at 68 East Georgia Avenue. My married li fe has been exceptionally ha[illegible]

my life. My duties as Superintendent of the National Pencil Company were, in general, as follows: I had charge of the technical and mechanical end of the factory, looking after the operations and seeing that the product was turned out in quality equal to the standard which is set by our competitors. I looked after the installation of new machinery and the purchase of new machinery. In addition to that, I had charge of the office work at the Forsyth Street plant, and general supervision of the lead plant, which is situated on Bell Street. I looked after the purchase of the raw materials which are used in the manufacture of pencils, kept up with the market of those materials, where the prices fluctuated, so that the purhcases could be made to the best possible advantage. On Friday, April 25th, I arrived at the pencil factory on Forsyth Street, at about seven o'clock,--my usual time. I immediately started in on my regular routine work, looking over papers that I had laid out the evening before, and attending to any other work that needed my special attention that morning. At about 9:30, I went over to the office of the General Manager and Treasurer, Mr. Sigmond Montag, whose office is at Montag Brothers, on Nelson Street. I stayed over there a short time, got what papers and mail had arrived over there--all the mail for the pencil company comes over there to their office--I got that mail and brought it back to Forsyth Street. I then separated the mail and continued along my usual routine duties in the office on Forsyth Street. At about eleven o'clock, Mr. Schiff handed me thepay-roll books covering the plants at Forsyth Street and at Bell Street, for me to check over to see that the amounts and the extensions were correct. Of course,this work has to be very carefully done, so that the proper amount of money is drawn from the bank.

This checking took me until about 12:30, P.M., when I made out the amount on a slip of paper that I wished to have drawn from the bank, went over to Montag Brothers, had the checks drawn and signed by Mr. Sigmond Montag, after which I returned to Forsyth Street and got the leather bag in which I usually carry the money and the coin from the bank, and got the slip on which I had written the various denominations in which I desired to have the pay-roll made out, accompanied by Mr. Herbert Schiff, my assistant, went to the Atlanta National Bank, where I had the checks cashed. Returning to the factory in company with Mr. Schiff, I placed this bag containing the money for the pay-roll in the safe and locked it. At this time, my wife called for me and in her company and that of Mr. Schiff, I went over to the car and took my wife home to lunch. After lunch, I returned to the factory and took a tour for about an hour through the factory, after which I then assisted Mr. Schiff in checking over the amounts on the pay-envelopes,-- checking the money against the duplicate slips that we had gotten from the bank, to see that the correct amount had been given us, and I helped Mr. Schiff checking over the money and in filling the envelopes. This too,k us approximately until a quarter to six, to fill the envelopes, seal them, and place them in the box that we have over there, with two hundred pigeon holes, and which we call our pay-off box. While I was so occupied with Mr. Schiff in filling these envelopes, a young man by the name of Wright, who had helped us out as a clerk in the office during the past week, came in and I paid him in cash, as Mr. Schiff, I found, neglected to put his name on the pay-roll; I just made out a ticket for the amount of money he drew and put it in the cash box and charged it to the cash box and not to the pay-roll. At a quarter to six, payment

of the help took place, Mr. Schiff taking all the envelopes that were due the help who had worked from April 18th to 24th, inclusive, out to the pay-roll window, which is entirely outside of either my inner office or the outer office andout in the hall beyond,--a little window that we have built. I sat in my office checking over the amount of money which had been left over. This amount was equal,--or should have been equal, to the amount that had been loaned out in advance to help and had been deducted when we were filling the envelopes. In checking this amount over,--as near as I can recollect it, there was about $15.00,--I noticed a shortage of about $1.20,--something over a dollar, at any rate, and I kept checking to see if I couldn't find the shortage going over the various deductions that had been made, but I couldn't locate it that evening. After the help had been paid off, during which time as I sat in my office, no one came into my office who asked me for a pay envelope or for the pay envelope of another. After the paying off of the help had taken place, Mr. Schiff returned and handed me the envelopes which were left over, bound with an elastic band, and I put them in the cash compartment,--which is different from the cash box,--a certain cash compartment in the safe, the key to which is kept in my cash box. I placed them in the safe, and Mr. Schiff busied himself clearing up the books and the files and placing them in the safe. While he was doing that, I placed in the time clocks, the slips to be used thenext day. I took out the two time slips which were dated April 25, which had been used by the help on Friday, April 25th, and took two slips out to the clock, the ends of which I creased down so that they would fit into the cylinder inside of the clocks; and I noticed that I had neglected to stamp the date on them, so I just wrote on them "April 26, 1913,"--

the way we usually do with the time clock. After placing these slips in the clock and bringing those back in the office, Mr. Schiff and myself left for home, it being about 6:30. I neglected to state that while I was sitting in the office, Mr. Schiff was paying off Newt Lee--these are the two time slips I took out--

Gentlemen, as I was saying, these two slips that had April 26th, 1913 written at the bottom are the two slips I put in the clock on the evening of Friday April 25th, to be used on the day following, which, of course, was April 26th. I neglected to mention also, in going over my duties at the factory, that Mr. N. V. Darley was superintendent of labor and of manufacture, it feell to his duty to engage the help and to distribute the help throughout the plant, and to discharge the help in case it was necessary; it was also due to him whether their wages were raised or not. In other words, he was the man that came directly in contact with the help. Moreoyer , he saw that the goods progressed through the factory without stopping, easily, quickly, and economically manufactured. On Friday evening, I got home at about 6:30, had my supper, washed up, then went with my wife to the residence of her ~~uncle~~ male, Mr. Carl. Wolfsheimer and his wife and myself played a game of auction bridge for the balance of the evening. My wife and I returned home and retired at about eleven o'clock. On Saturday April 28th, I rose between seven and seven thirty and leisurely washed and dressed, had my breakfast, caught a Washington Street or Georgia Avenue car, --I don't recall which, at the corner of Washington and Georgia Avenue, and arrived at the factory on Forsyth Street, the Forsyth Street plant, at about 8:30, is my recollection.

On my arrival at the factory, I found Mr. Holloway, the day watchman, at his usual place, and I greeted him in my usual

way; I found Alonzo Mann, the office boy, in the outer office, I took off my coat and hat and opened my desk and opened the safe, and assorted the various books and files and wire trays containing the various papers that were placed there the evening before, and distributed them in their proper places about the office. I then went out to the shipping room and conversed a few minutes with Mr. Irby, who at that time was shipping clerk, concerning the work which he was going to do that morning, through, to the best of my recollection, we did no shipping that day, due to the fact that the freight offices were not receiving any shipments, due to its being a holiday. I returned to my office, and looked through the papers, and assorted out those which I was going to take over on my usual trip to the General Manager's office that morning; I then turned to the invoices covering shipments which were made by the Pencil Factory on Thursday, April 24th, and which were typewritten and figured out on Friday, April 25th, by Miss Eubanks, the stenographer who stays in my office; she had hurried through with her work that day, previous to going home, so she could spend the holiday in the country where she lived; I didn't get to checking over those invoices covering these shipments on Friday, due to the fact that Mr. Schiff and myself were completely occupied the entire day until we left the factory, with the pay-roll, so naturally, as these invoices covering shipments which were made on April 25th, ought to have been sent to the customers, I got right to work in checking them. Now, I have these invoices here; these papers have not been exhibited before, but I will explain them. ~~You have seen some~~ Of all the mathematical work in the office of the Pencil Factory, this very operation, this very piece of work that I have now before me, is the most important, it is the invoices covering shipments that are sent to customers, and

it is very important that the prices be correct, that the amount of goods shipped agrees with the amount which is on the invoice, and that the terms are correct, and that the address is correct, and also in some cases, I don't know whether there is one like that here, there are freight deductions, all of which have to be very carefully checked over and looked into, because I know of nothing else that exasperates a customer more than to receive invoices that are incorrect; moreover, on this morning, this operation of this work took me longer than it usually takes an ordinary person to complete the checking of the invoices, because usually one calls out and the other checks, but I did this work all by myself that morning, and as I went over these invoices, I noticed that Miss Eubanks, the day before, had evidently sacrificed accuracy to speed, and every one of them was wrong, so I had to go alone over the whole invoice, and I had to make the corrections as I went along, figure them out, extend them, make deductions for freight, if there were any to be made, and then get the total shipments, because, when these shipments were made on April 24th, which was Thursday, this was the last day of our fiscal week, it was on this that I made that financial sheet which I make out every Saturday afternoon, as has been my custom, it is on this figure of total shipments I make that out, so necessarily it would be the total shipments for the week that had to be figured out, and I had to figure every invoice and arrange it in its entirety so I could get a figure that I would be able to use. The first order here is from Hilton, Hart & Kern Company, Detroit, Mich., here is the original order which is in the file of our office, here is the transcription which was made on March 28th. It hadn't been shipped until April 24th, this customer ordered 100 gross of No. 2 of a certain pencil

stamped "The Packard Motor Car Company," 125 gross of No. 3 and 50 gross of No. 4; those figures represent the grade or hardness of the lead in the pencils; we shipped 100 gross of No. 2, 11 1/2 gross of No. 3, and 49 gross of No. 4, the amount of the shipment of No. 3 is short of the amount the customer ordered, therefore, there is a suspense shipment card attached to it, as you will notice, the first shipment on this order took place on April 24th, it was a special order and a special imprint on it, and therefore, the length of time, order received at the factory on March 18th. In invoicing shipments made by the Pencil Company, our method is as follows: We make out in triplicate, the first or original is a white sheet, and that goes to the customers; the second is a pink sheet and that goes over to the General Manager's office and is filed serially, that is, chronologically; one date on the top, and from that the charges are made on the ledger, and the last sheet or third sheet is a yellow sheet, which is here, those are placed in a file in my office, and are filed alphabetically. These yellow sheets I have here are not the yellow sheets I had that day, because they have since been corrected, I am just taking the corrected sheets, I made the corrections, Miss Eubanks returned on Monday and saw the corrections I had made in pencil on the white sheets, and made another set of triplicates afterwards, and I presume made them correct, I was not there, and I don't know. These orders are respectively Hilton, Hart & Kern Company, L. W. Williams & Company of Fort Worth, Tex., the Fort Smith Paper Company of Fort Smith, Ark., S. O. Barnum & Sons, Buffalo, N. Y., S. T. Warren & Company, South Clarke St., Chicago, Ill, S. H. Kress Company, warehouse at 91 Franklin St., New York, N.Y.; there is an order that we have

to be particularly careful with, because all these five and ten cent syndicates have a great deal of red tape. These invoices, though they were typed on April 25th, Friday, were shipped on April 24th, and bear date at the top on which the shipment was made, irrespectiveof the date on which these are typewritten; in other words, the shipments took place April 24th, and that date is at the top typewritten, and a stamp by the office boy at the bottom, April 24th. Among other things that the S. H. Kress Company demands is that on their orders, you must state whether or not it is complete, the number of the store, and by which railroad the shipment goes. Here is one from F. W. Woolworth & Company, Frankfort, Ind., take the following illustrations: Less 95 lbs., at 86 cents per hundred lbs., freight credit; in other words, we had to find out what the weight of that shipment was, and figure out the amount of credit that they were entitled to on the basis of 86 cents for every 100 lbs. shipped. Then, here comes one to Gottliev & Sons, one of our large distributors in New York, N.Y., they have a freight allowance of 86 per hundred lbs. also, and their shipment amounted to 618 lbs., on Thursday, April 24th, That was a shipment of throw-outs, or jobs.

I started on this work, as I said, and had gone into it in some detail, to show you the carefulness with which the work must be carried out, I was at work on this one at about 9 o'clock, as near as I remember, Mr. Darley and Mr. Wade Campbell, the inspector of the factory, came into the outher office, and I stopped what work I was doing that day on this work, and went to the outer office and chatted with Mr. Darley and Mr. Campbell for ten or fifteen minutes, and conversed with them, and joked with them, and while I was talking to them, I should

Smith came in and asked me for her pay envelope, and for that of her sister-in-law, and I went to the safe and unlocked it and got out the package of envelopes that Mr. Schiff had given me the evening before, and gave her the required two envelopes, and placed the remaining envelopes that I got out, that were left over from the day previous, in my cash box, where I would have them handy in case others might come in, and I wanted to have them near at hand without having to jump up and go to the safe every time in order to get them; I keep my cash box in the lower drawer on the left hand side of my desk. After Miss Smith had gone away with the envelopes, a few minutes, Mr. Darley came back with the envelopes, and pointed out to me an error in one of them, either the sister-in-law of Miss Mattie Smith, she had gotten too much money, and when I had deducted the amount that was too much, that amount balanced the pay-roll, the error in the pay-roll that I had noticed the night before, and left about five or ten cents over; those things usually right themselves anyhow. I continued to work on those invoices, when I was interrupted by Mr. Lyons, Superintendent of Montag Brothers, coming in, he brought me a pencil display box that we call the Panama assortment box, and he left it with me, he seemed to be in a hurry, and I told him if he would wait for a minute I would go over to Montag Brothers' with him, as I was going over there; and he stepped out to the outer office, and as soon as I come to a convenient stopping place in the work, I put the papers I had made out to take with me in a folder, andput on my hat and coat and went to the outer office, when I found that Mr. Lyons had already left. Mr. Darley left with me, about 9:35 or 9:40, and we passed out of the factory, and stopped at the corner of Hunter and Forsyth Streets, where

bought a package of Favorite cigarettes, and after wehad our drink, we conversed together there for some time, and I lighted a cigarette and told him good-bye, as he went in one direction, and I went on my way then to Montag Brothers', where I arrived, as nearly as may be , at 10 o'clock, or a little after; on entering Montag Brothers, I spoke to Mr. Sig. Montag, the General Manager of the business, and then the papers which I collected, which lay on his desk, I took the papers out and transferred them into the folder, and took the other papers out, which I had in my folder, and distributed them at the proper places at Montag Brothers, I don't know just what papers they were, but I know there were several of them, and I went on chatting with Mr. Montag, and I spoke to Mr. Matthews, and Mr. Cross, of the Montag Brothers, and after that I spoke to Miss Hattie Hall, the Pencil Company's stenographer, who stays at Montag Brothers', and asked her to come over and help me that morning; as I have already told you, practically every one of these invoices was wrong, and I wanted her to help me on that work, and in dictating the mail; in fact, I told her I had enough work to keep her busy that whole afternoon if she would agree to stay, but she said she didn't want to do that, she wanted to have at least half a holiday on Memorial Day. I then spoke to several of the Montag Brothers' force on business matters and other matters, and after that I saw Harry Gottheimer, the sales manager of the National Pencil Company, and I spoke at some legnth with him in reference to several of his orders that were in work at the factory, there were two of his orders especially that he laid special stress on, as he said he desired to ship them right away, and I told him I didn't know how far along in process of

manufacture the orders had proceeded, but if he would go back with me then I would be very glad to look for it, and then tell him when we could ship them, and he said he couldn't go right away, he was busy, but he would come a little later, and I told him I would be glad for him to come over later that morning or in the afternoon, as I would be there until about 1 o'clock in the morning, and after three. I then took my folder and returned to Forsyth Street alone. On arrival at Forsyth Street, I went to the second or office floor, and I noticed the clock, and it indicated five minutes after 11 o'clock. I saw Mr. Holloway there, and I told him he could go as soon as he got ready, and he told me he had some work to do for Harry Denham and Arthur White, who were doing some repair work up on the top floor, and he would do the work first. I then went into the office, I went in the outer office, and found Miss Hattie Hall, who had preceded me over from Montag's, and another lady who introduced herself to me as Mrs. Arthur White, and the office boy; Mrs. Arthur White wanted to see her husband, and I went into the inner office, and took off my coat and hat, and removed the papers which I had brought back from Montag Brothers in the folder, and put the folder away. It was about this time that I heard the elevator motor start up and the circular saw in the carpenter shop, which is right next to it, running, I heard it saw through some boards, which I supposed was the work that Mr. Holloway had referred to. I separated the orders from the letters which required answers, and took the other material, the other printed matter that didn't need immediate attention, I put that in various trays, and I think it was about this time that I concluded I would look and see how far along the reports were, which I use in getting up my financial report every Saturday afternoon, and to my surprise I found that the

sheet which contains the record of pencils packed for the week didn't include the report for Thursday, the day the fiscal week ends; Mr. Schiff evidently, in the stress of getting up, figuring out and filling the envelopes for the pay-roll on Friday, instead of, as usual, on Friday and half the day Saturday, had evidently not had enough time. I told Alonzo Mann, the office boy, to call up Mr. Schiff, and find out when he was coming down, and Alonzo told me the answer came back over the telephone that Mr. Schiff would be right down, so I didn't pay any more attention to that part of the work, becausel expected Mr. Schiff to come down any minute. It was about this time that Mrs. Emma Clark Freeman and Miss Corinthia Hall, two of the girls who worked on the fourth floor, came in, and asked permission to go upstairs and get Mrs. Freeman's coat, which I readily gave, and I told them at the same time to tell Arthur White that his wife was downstairs. A short time after they left my office, two gentlemen came in, one of them a Mr. Graham, and the other the father of a boy by the name of Earle Burdette; these two boys had gotten into some sort of trouble during the noon recess the day before, and were taken down to police headquarters, and of course didn't get their envelopes the night before, and I gave the required pay envelopes to the two fathers, and chatted with them at some length in reference to the trouble their boys had gotten into the day previous. And just before they left the office, Mrs. Emma Clark Freeman and Miss Corinthia Hall came into my office and asked permission to use the telephone, and they started to the telephone, during which time these two gentlemen left my office. But previous to that, when these two gentlemen came in, I had gotten Miss Hattie Hall in and dictated what mail I had to give her, and she went out and was typewriting the mail; before these girls finished

these letters telephoning Miss Hattie Hall finished
the typewriting of these letters and brought them to my desk
to read over and sign, which work I started. Miss Clark and
Miss Hall left the office, as near as may be, at a quarter to
twelve, and went out, and I started to work reading over the
letters and signing the mail. I have the carbon copies of
these letters which Miss Hall typewrote for me that morning
here, attached to the letters from the customers, or the parties
whose letter I was answering; they have been introduced, and
have been identified. I see them here (Defendant's Exhibit 8),--
Southern Bargain House, there was a letter from Shode-Lombard,
dye makers, 18 Franklin Street, the American Die Lock Company,
Newark, N.J., another letter to Shode-Lombardt Company in
answer to one of theirs about a die, Shode-Lombardt Company
being in New York, one to Henry Disston & Sons, in reference
to a knife which they sent us to be tried out, a circular
knife, one to J. B. McCrery, Five & Ten Cent Syndicate, one to
the Pullman Company of Chicago, Ill, in reference to their
special imprint pencils, which they were asking us to ship as
soon as possible, one to A. J. Sassner, another die maker;
these letters are copies of the ones I dictated that morning;
I signed these letters, and while I was signing, as Miss Hall
brought these letters in to be signed, I gave her the orders
which had been received by me that morning at Montag's office,
over at the General Manager's office, I gave her these orders
to be acknowledged. I will explain our method of acknowledgment
of orders in a few minutes. I continued signing the letters
and separating the carbon copies from the letters, and putting
them in various places, I folded the letters and sealed the
letters, and of course I told Miss Hall I would post them my-
self. Miss Hall finished the work and started to leave when the
12 o'clock whistle blew, she left the office and returned it look-

ed to me, almost immediately, calling into my office that she had forgotten something, and then she left for good. Then I started in, we transcribed, first we enter all orders into the house order book (Defendant's Exhibit 12), all these orders which Miss Hall had acknowledged, I entered in that book, and I will explain that matter in detail. There has been some question raised about this, but I believe I can make it very clear. Here is an order from Beutall Brothers Company 'Defendant's Exhibit 21); the very first operation on an order that is received by the Pencil Factory at Forsyth Street in my office is the acknowledgement; that is the first operation, because the acknowledgement is the specific second part of the contract, the first part is when they send us the order; that is the party of the first part, and the party of the second part is when we write them an acknowledgement card and agree to fill the order, and enter the order which they send us, and so necessarily, to satisfy our customers, it must be the very first thing that is done, and is the first thing. The acknowledgement stamp, which you have already seen here below, shows first two things; first, who acknowledges the order, and second the date it was received in the office on Forsyth Street. Here is one from Butell Brothers (Defendant's Exhibit 21); that bears the date April 23rd, up at the top; that was the date when Beutell Brothers in Dubuque, Ia., had that letter typewritten, we didn't know when they mailed it, but that is the day it was written, it was received at the General Manager's office, might have been received Friday, on Friday April 25th, after I had gotten the mail that day there, and remained there until April 26th, when I went over and got the mail again. Here is one from John Laurie & Sons,(Defendant's Ex. 23), and here is one I think Mr. Dorsey did some questioning about, because

of the fact that up here at the top was 4-22, this order was written in pencil, of course it is written in pencil; this is an order from F. W. Woolworth & Company (Deft's Ex. 17), that is a Five & Ten Cent syndicate, as you know, probably the largest in the world, that has over 700 stores, and these stores would be so bulky for one office to handle that the 700 stores are divided into different groups or provinces, and in charge of each group there is a certain office; for instance, there is one at Toronto, for the Canadian stores; one in Buffalo, one in Boston, one in New York, there is one at Wilkesbarre, one at St. Louis, one at Chicago, one at San Francisco. Now, this order, by looking at it, I can tell, because I have had reason to look into and know the system of orders used by this syndicate, and I most assuredly have to know it, you notice Chicago, Ill., 4/22, down here, and also store No. 185, the Woolworth Company 347 (Deft's Ex. 17), here again is Dekalb, Ill. In other words, DeKalb, Ill., is in the jurisdiction of the Chicago office. These blanks are distributed among these various five and ten cent stores, and the manager of one store, when he wants to order goods, he finds his stock is getting a little low, he makes that out and sends his order in to the Chicago Office; at the Chicago office, the buyer looks over it, and sees that the Manager has carefully and economically ordered the goods, and then you will notice that little stamp punched through; you see up there that says: "Valid, 4-23," in other words, of course, we couldn't have put that on there at our office, but the validation stamp, with 4-23, the date of it, shows it took a day to travel from DeKalb, Ill., to Chicago, Ill., and that stamp shows the validation of the order on that date by the head office, and that order is then forwarded by the head office to us. Now, this order is usually made out by

the Manager or the Clerk of the Manager or some one in that F. W. Woolworth store. Here is one from Wilkesbarre itself (Deft's. Ex. 18), that is from the head office itself. Here is one from St. Joseph, Mo. (Deft's Ex. 14) viz. St. Louis, that bears the validation stamp of the St. Louis head office. You gentlemen understand these people are great big people, a great big syndicate, and they have to do their clerical work according to a system that is correct. Now, then, that was the first operation on these orders after we separated them from the other mail, and we hand that on to our Superintendent. I am showing you about the acknowledgement stamp, because it is important first because it shows the acknowledgment of the order, and who acknowledged it, and secondly shows the date on which the orders were received at my office. To the best of my recollection, these acknowledgement cards were given to the office boy to post, after Miss Hall had made them out.

Now, in reference to the work that I did on these orders, starting here with order 7187 (Deft's. Ex. 14-24), and continuing through 7197, that is not such an easy job as you would have been led to believe; in the first place, next to the serial number, there is a series of initials, and those initials stand for the salesman who is credited with the order; in other words, if a man at the end of the year wants to get certain commissions on orders that come in, we have to very carefully look over those orders to see to whom or to which salesman or to which commission house or which distributing agent that order is credited, so therefore it takes a good deal of judgment and knowledge to know just to which salesman to credit, and sometimes, I can't say that it was incorrect that morning, but it might have been, sometimes I have to go through a world of papers to find just to whom a certain order is to be credited. Then I enter in the various orders here, too, the next column

shows to whom the goods are to be shipped; of course that is not very difficult to do, that is just a mere copy. The store numbers are put down in case the stores have numbers, and then one must look over the order; I notice that one of the orders is one to R. E. Kendall (Deft's. Ex. 24) at Plum St., Cincinnati, O., calling for a special, and that has to be noted in ~~this column here~~, you will notice regular or special, notice here the word special out here opposite R. E. Kendall, ~~that thing has to be very carefully~~ noted also. Now, in this column is the order number, and that order number is the customer's order number, to which we have to ~~refer always~~ when we ship that order. Now, in these cases like on these Woolworth orders (Deft's Ex. 17), when ~~there is no order~~ number, we put down ~~the date~~ with the month, so in that way that give it, 4-22, that was the date the order was made out, ~~so we can absolutely refer to it; in this column is the ship-~~ ping point and the date we are going to ship it, and in this column represents the date on which the order was received, and the month, which is April 26th, according to the acknowledg-ment, corresponding to the acknowledgment stamp. Now, after that work, after the order was acknowledged and entered in here, the next step is the filling in on the proper place on this sheet which has already been tendered and identified. Now, the work done by me on that day right here, that was Saturday, Saturday is the second day of the fiscal week, Friday, Saturday, Sunday, Monday, Tuesday, Wednesday and Thursday,--Saturday is the second day , and you will notice, gentlemen, there are only two entries there, ~~the work not having been done since I left the factory,~~ there are only two entries there, and the last entry is April 26th, which was Saturday. Now then, the information on this sheet is as follows: I go through the

orders and find out the number of gross of pencils which our customers order which fall in certain price groups, that is, to find the number of gross of pencils for which the Pencil Factory gets 60 cents a gross, and I put them down under the first column, the second under the column RI, which means rubber inserted, and for which we get an averageprice of 80 cents, I go through the same thing and put the figures all out, in this case, it was 102; then we have a price group on which we get an average of $1.25, and it covers a range in price from $1.00 per gross to $1.40; there were 116 gross of such pencils ordered with these orders which were received that morning. The next price group are those on which we figure on an average price of $1.75 a gross, and falling within those limits of $1.50 to $1.95 inclusive; in this case, there were 34 1/2 gross; then there is a group between $2.00 and $2.95, averaging $2.50, and there was 100 1/2 gross that day, then $3.00 and over, which we always figure at just $3.00, we have goods that we get $3.25 for, and some that we get $3.50 for, but we figure them all at $3.00, so it is a conservative estimate. The reason this is done is this; in the pencil business, just like in all manufacturing businesses, that is manufacturing an article that has to be turned out in large quantities, it behooves the sales department to sell as much of your high priced goods as possible, and as few of your cheap goods, and therefore, if you know how many of the cheap goods and how many of the better grade of goods you are selling, it serves as a barometer on the class of goods that is being sold. You can see that this job takes quite a little figuring and quite a little judgment.

After finishing that work, I went on to the transcription of these orders to these requesitions, and notwithstanding an answer that has been made, I wrote those requisitions myself.

(Deft's Exs. 25-35). That is my hand-writing and you can read every one of them through (Deft's Exs. 25-35). Here is one, F. W. Wolworth, I wrote that one, and another one F. W. Wolworth, I wrote that one, and another one F. W. Wolworth. Here is one 5 and 10 cent store, Sault Sta Marie (Deft's Ex. 31), I wrote that one, and here is F. W. Wolworth, DeKalb, Illinoise, and Logansport, Indiana (Deft's Ex. 27). That is all my hand-writing, excepting the amounts that are placed down here under the dates when the shipment of these orders were made, which is in the hand-writing of my assistant, Mr. Schiff. This part, the amount, date, numbers, address, salesman, date April 26th, and the order number, taking the date in lieu of the order number, as I explained previously, that is all my hand-writing,-everything except that amount there and the subsequent date, that is in my hand-writing and the work on all of those was done on the morning of April 26th.

Miss Hall left my offied on her way home at this time, and to the best of my information there were in the building arthur White and Harry Denham and Arthur White's wife on the top floor. To the best of my knowledge, it must have been from ten to fifteen minutes after Miss Hall left my office, when this little girl, whom I afterwards found to be Mary Phagan, entered my office and asked for her pay envelope. I asked for her number and she told me; I went to the cash box and took her envelope out and handed it to her, identifying the envelope by the number. She left my office and apparently had gotten as far as the door from my office leading to the outer office, when she evidently stopped and asked me if the metal had arrived, and I told her, no. She continued on her way out and I heard the sound of her foot steps as she went away. It was a few moments after she asked me this question that I had an impression of a female voice saying something; I don't know

which way it came from; just passed away and I had that impression. This little girl had evidently worked in the metal department by her question and had been laid off owing to the fact that some metal that had been ordered had not arrived at the factory; hence, her question. I only recognized this little girl from having seen her around the plant and did not know her name, simply identifying her envelope from her having called her number to me.

She had left the plant hardly five minutes when Lemmie Quinn, the foreman of the plant, came in and told me that I could not keep him away from the factory, even though it was a holiday; at which I smiled and kept on working. He first asked me if Mr. Schiff had come down and I told him he had not and he turned around and left. I continued work until I finished this work and these requisitions and I looked at my watch and noticed that it was a quarter to one. I called my home up on the telephone, for I knew that my wife and my mother-in-law were going to the matinee and I wanted to know when they would have lunch. I got my house and Minola answered the phone and she answered me back that they would havelunch immediately and for me to come right on home. I then gathered my papers together and went up stairs to see the boys on the top floor. This must have been, since I had just looked at my watch, 10 minutes to one. I noticed in the evidence of one of the witnesses, Mrs. Arthur White, she states it was 12:35 that she passed by and saw me.. That is possibly true; I have no recollection about it; perhaps her recollection is better than mine; I have no remembrance of it; however, I expect that is so. When I arrived up stairs I saw Arthur White and Harry Denham who had been working up there and Mr. White's wife. I asked them if they were ready to go and they said they had enough work to

keep them several hours. I noticed that they had laid out some work and I had to see what work they had done and were going to do. I asked Mr. White's wife if she was going or would stay there as I would be obliged to lock up the factory, and Mrs. White said, No, she would go then. I went down and gathered up my papers and locked my desk and went around and washed my hands and put on my hat and coat and locked the inner door to my office and locked the doors to the street and started to go home.

Now, gentlemen, to the best of my recollection from the time the whistle blew for twelve o'clock until after a quarter to one when I went up stairs and spoke to Arthur White and Harry Denham, to the best of my recollection, I did not stir out of the inner office; but it is possible that in order to answer a call of nature or to urinate I may have gone to the toilet. Those are things that a man does unconsciously and can not tell how many times nor when he does it. Now, sitting in my office at my desk, it is impossible for me to see out into the outer hall when the safe door is open, as it was that morning, and not only is it impossible for me to see out, but it is impossible for people to see in and see me there.

I continued on up Forsyth to Alabama and down Alabama to Whitehall where I waited a few minutes for a car, and after a few minutes a Georgia Ave. car came along; I took it and arrived home at about 1:20. When I arrived at home, I found that my wife and my mother-in-law were eating their dinner, and my father-in-law had just sat down and started his dinner. I sat down to dinner and before I had taken anything, I turned in my chair to the telephone, which is right behind me and called

I had to do at the factory, I would be unable to go with him, he having invited me to go with him out to the ballgame. I succeeded in getting his residence and his cook answered the phone and told me that Mr. Ursenbach had not come back home. I told her to give him a message for me, that I would be unable to go with him. I turned around and continued ~~eating~~ my lunch, and after a few minutes my wife and mother-in-law finished their dinner and left and told me good bye. My father in law and myself continued eating our dinner, Minola McKnight serving us. After finishing dinner, my father-in-law said he would go out in the back yard to look after his chickens and I lighted a cigarette and laid down. After a few minutes I got up and walked up Georgia Avenue to get a car. I missed the ten minutes to two car and I looked up and saw in front of Mr. Wolfscimer's residence, Mrs. Mickle, an aunt of my wife who lives in Athens, and there were several ladies there and I went up there to see them and after a few minutes Mrs. Wolfshimer came out of the house and I waited there until I saw that I could catch the car. I got on the car and talked to Mr. Loeb on the way to town. The car got to a point about the intersection of Washington street and Hunter street and the fire engine house and there was a couple of cars stalled up ahead of us, the cars were waiting there to see the memorial parade; they were all banked up. After it ~~stood there a few minutes~~ as I did not want to wait, I told Mr. Loeb that I was going to get out and go on as I had work to do. So I went on down Hunter street, going in the direction of Whitehall and when I got down to the corner of Whitehall and Hunter, the parade had started to come around and I could not get around at all and I had to stay there fifteen or twenty minutes and see the parade.

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Then I walked on down Whitehall on the side of Mr. M. Rich & Bros. Store towards Brown & Allens; when I got in front of M. Rich & Bros. store, I stood there between half past 2 and few minutes to 3 o'clock until the parade passed entirely; then I crossed the street and went on down to Jacobs and went in and purchased twenty five cents worth of cigars. I then left the store and went on down Alabama street to Forsyth street and down Forsyth street to the factory. I unlocked the street door and then unlocked the inner door and left it open and went on up stairs to tell the boys that I had come back and wanted to know if they were ready to go, and at that time they were preparing to leave. I went immediately down to my office and opened the safe and my desk and hung up my coat and hat and started to work on the financial report, which I will explain. Mr. Schiff had not come down and there was additional work for me to do.

In a few minutes after I started to work on the financial sheet, which I am going to take up in a few minutes, I heard the bell ring on the time clock outside and Arthur White and Harry Denham came into the office and Arthur White borrowed $2.00 from me in advance on his wages. I had gotten to work on the financial sheet, figuring it out, when I happened to go out to the laveratory and on returning to the office, the door pointed out directly in front, I noticed Newt Lee, the watchman, coming from towards the head of the stairs, coming towards me. I looked at the clock and told him the night before to come back at 4 o'clock for I expected to go to the base ball game. At that time Newt Lee came along and greeted me and offered me a bannana out of a yellow bag which he carried, which I presume contained bannanas; I declined the bannana and

told him that I had no way of letting him know sooner that I was to be there at work and that I had changed my mind about going to the ball game. I told him that he could go if he wanted to or he could amuse himself in any (way) that he saw fit for an hour and a half, but to be sure and be back by half past six o'clock. He went off down the stair case leading out and I returned to my office. Now, in reference to Newt Lee, the watchman, the first night he came there to watch, I personally took him around the plant, first, second and third floors and into the basement, and told him that he would be required, that it was his duty to go over that entire building every half hour; not only to completely tour the upper four floors but to go down to the basement, and I specially stressed the point that that dust bin along here was one of the most dangerous places for a fire and I wanted him to be sure and go back there every half hour and to be careful how he held his lantern. I told him it was a part of his duty to look after and lock that back door and he fully understood i t, and I showed him the cut-off for the electric current and told him in case of fire that ought to be pulled so no fireman coming in would be electrocuted. I explained everything to him in detail and told him he was to make that tour every half hour and stamp it on the time card and that that included the basement of the building.

Now this sheet here (Deft's Ex. 7) is the factory record containing the lists of the pencils in stock and the amount of each and every number; the amount of each and every one of our pencils which we manufacture at the end of any given week. There are no names there. We make the entries on this sheet by the trade notes. Here is a sample case containing the pencils which are manufactured at the Forsyth Street plant. That is just as an explanation of what these figures are.

Well, I expect you have gotten anough of a glance at them for you to know that there are a great many pencils and a great many colors, all sorts and styles; all sorts of tips, all sorts of rubbers, all sorts of stamps--I expect there are 140 pencils in that roll. That shows the variety of goods we manufacture. We not only have certain set numbers that we manufacture, but we will manufacture any pencil to order for any customer who desires a sufficient number of a special pencil, into a grade similar to our own pencil. Now, this pencil sheet when I looked at it about half past eleven or thereabouts on Saturday morning, was incomplete.. It had the entry for Thursday, April 24th, omitted, Mr. Schiff had entered the production for April 18th, 19th, 22nd and 23rd, (Deft's Ex. 7), but he had omitted the entry for the 24th, and the 24th not being there, of course it was not totaled or headed, so it became necessary to look in this bunch of daily reports which was handed in every day by the packing forelady, sort out the various pencils noted on there, and place them in their proper places. Before proceeding further on that, I want to call your attention to the fact that we use this sheet for two weeks. You notice two weeks ending down there April 27th, April 17th, and one ending the week later, April 24th, (Df.Ex 7).Mr. Schiff, I notice, put April 17th at the top and the date corresponds to the entries here on the side; these are the dates alongside of each entry. Now, where we have any special pencil, as a general rule--for instance, take two 10-x special up there; we manufacture Two 10-X special for the Cadillac Motor Car Company. Now, there is a 660-X pencil; that 660-X pencil we call Panama, but in this entry it is called Cracker-Jack. Now, here is another 660-X special, ours being Panama and this the Universal 660-X special. In other words

the name of the customer, if he wants business in a sufficient quantity. Well, I had to go through this report for Thursday, handed in by Miss Flowers, the forelady of the packing department, as she said, on Friday; I had to go through it and make the entries. Now, after I made the entries, I had to total each number for itself; that is, the number of 10-X, 20-X, etc. Now, I notice that both of the expert accountants who got on the stand, pointed out two errors. While those errors are trivial, yet there is enough of human pride in me to explain that these errors were not mine. Those errors, one of ~~one and a half gross and one of one gross, in totalling~~ up, these totals here on the 18th and 19th (Deft's Ex. 7)--those entries were made by Mr. Schiff. I don't expect he meant to make an error, but they happen to be in his hand-writing. Those totals were already down there for the various days ~~when I got the sheet and I always take them as correct without~~ any checking of his figures. The only figures that I check are my own figures. I add my correct figures to his figures and of course, not having checked the figures, I had to assume he entered it correctly, so I would not have known it. As I say, my usual method is to take his figures as correct per se. Now, after I entered them in the total, the next thing I did was to make out the job sheet, the job or throw-outs. Now in regard to these jobs, if I recall it correctly, was the only error that the expert accountant found in my work on the financial sheet for that day, but it really was not an error, as I will show you. He didn't know my method of doing that, and therefore, he could not know the error. When I explain to you fully the method in which I arrive at these figures you also will see they are not in error. Now among the packing reports that are handed in to the office just like Miss Eura

May handed this in from the packing room proper, there is another room where pencils are packed, viz: the deaprtment under the foreladyship of Miss Fannie Atherton, head of the job department. The jobs are our seconds or throw-outs for which we get less money, of course, than for the first. You see that Fannie A (Deft's Ex. 4b); that is Fannie Atherton. That is the job department. Now, I took each of those job sheets and separated them from the rest of those sheets, findingout how many jobs of the various kinds were packed that week. Now, this sheet shows that there (were) 12 different kinds of jobs packed that day. Each of them, you will notice has a different price. That is the number of jobs 0-95, or the numbef of job 114; that is the number of the job; not the amount, but the number by which it is sold. Out here you see the amount of that job which was packed; 180 gross, one gross, six gross, 24 gross, etc. Then you will find the actual price we receive for each. Then I make the extensions and find the number of gross of pencils, 180 gross at 40 cents, of course, is $72.00. In other words, there is the actual number of jobs packed that day, the price we actually got for them, and the extensions are accurate and the totals are correct; the total amount of gross is totaled correctly, the total gross packed and the total amount of the value of those gross are the two figures that are put on that financial report, 791 gross jobs, $396.75, being absolutely correct, but in getting the average price, you notice 50.1 cents down below here, I just worked it approximately, because nobody cares if it costs so samall a fraction--the average price of these jobs, 50.1 cents, and six hundredths--that six hundredths was so small I couldn't handle it, so I stopped at the first decimal. Now in arriving at the total number of gross and the total value of

pencils, which are the two figures really important, I divided one by the other. I also used, in getting up the data for the financial sheet, by the way, one of the most important sheets is this very little sheet here (Deft's Ex. 4c). It looks very small, but the work connected with it is very large. Now, some of the items that appear on here are gotten from the reports which are handed in by the various forewomen. Now you saw on the stand this morning Mr. Godfrey Winekauf, the Superintendent of the lead plant; there is the report (Deft's Ex. 4C) of the amount of lead delivered that week, two pages of it; the different kinds of lead, No. 10 lead, No. 940, No. 2 and No. 930, and so on. Now here is a pencil with a little rubber stuck on the end; we only put six inches of lead in that, and stick rubber in the rest. Now here is the report of L. A. Quinn, foreman of the tipping plant (Deft's Ex. 4d). He reports on this the amount of work of the various machines; that is, the large eyelet machine, the small eylet machine and the other machines. Then he notates the amounts of the various tips used that he had made that week. Now, we have, I expect, 22 different kinds of tips, and one of them is a re-tip, and we never count a re-tip as a production. Now, this was made out for the week ending April 24th by Mr. Irby, the shipping clerk; that is, the amount of gross of pencils that he ships day by day. There were shipped 266 gross the first day, which was Friday in this case, Friday the 18th of April, 562 gross the 2nd day, which was Saturday, a half day, and the 19th day of April ; 784 gross on Monday, which was April 21st; 1232 gross (that was an exceptional day) were shipped on Tuesday April 22nd; 572 gross shipped on Wednesday April 23rd, and

of 4374 gross. Now, there is another little slip of paper (Deft's Ex. 4a) here that requires one of the most complicated calculations of this entire financial, and I will explain it. It shows the repack, and I notice an error on it here, it says here 4-17, when it ought to be 4-18; in other words, it goes from 4-17 through 4-24. That repack is go'ten up by Miss Eula May; you will notice it is O.K.'dbby her. Miss Eula May Flowers, the forelady, packed that; that is the amount of pencils used in our assortment boxes or display boxes. That is one of the tricks of the trade, when we have some slow mover, some pencil that doesn't move very fast, we take something that is fancy and put some new bright looking pencils with them, with these slow movers. That is a trick that all manufacturers use, and in packing these assortment boxes, which are packed under the direction of Miss Flowers, we send into the shipping room and get some pencils which have already been packed, pencils that have been on the shelf a year for all we know, and bring them in and unpack them and repack them in the display box. Therefore, it is very necessary in figuring out the financial sheet to notice in detail the amount of goods packed and just how many of those pencils had already been figured on some past financial report. We don't want to record it twice, or else our totals willbe incorrect; Therefore this little slip (Deft's Ex. 4a) showing the amount of goods which were repacked is very necessary. That was figured by me, and was figured by me on that Saturday afternoon, April 22nd. There were 18 gross of 35-X pencils selling for $1.25; 18 gross for $22.50. It shows right here, I figured that out. That is my writing right down there. Eighteen gross 35-X, $1.25, $22.50; 10 vross of 930-X figuring at $25.00;

that added up, as you will see, to $70.00. In other words, there were 40 gross of pencils, 36 gross of which sell in our medium price goods; 86 gross 35-X; 10 gross 930-X, $2.50, that is a high priced goods. Therefore, the re-pack for that week was 36 gross medium priced goods and 10 gross of high price goods. I will show you now where the $70.00 is and where the 36 gross is, and where the 10 gross figured in the financial sheet (Deft's Ex 7a). There is a little sheet suck up here in the corner attached to the record--the factory record of pencils manufactured during that week. That shows the production, divided into the following classes; cheap goods, the very cheapest we make, outside of jobs, those we figure at 60 cents a gross. Then there is the rubber insert, these we figure at 85 cents a gross, and then the job and then the medium; the medium being all goods up to a certain grade that contains the cheap lead, and the good being all those that contain a better class of lead. In this case, Mr. Schiff had entered it up to and through Wednesday, and had failed to enter Thursday, and I had to enter Thursday, and to figure it. This sheet shows the total of the three classes of goods packed from day to day. Now, I have had very few clerks at Forsyth Street, or anywhere else, for that matter, who could make out this sheet (Deft's Ex. 2) successfully and accurately. It involves a great deal of work and one has to exercise exceptional care and accuracy in making it out. You notice that the gross production here is 2765 1/2. That gives the net production. The gross production is nothing more than the addition, the total addition, the proven addition of these sheets containing the pencils packed. This other little sheet behind here represents the pencils packed the week of April [illegible] production. Now, this little sheet (Deft's

Ex. 7a) I had to work on, showing the pencils that were repacked, going into the display boxes, and the numbers, and subtracted that from the total amount 46 from 2765 1/2, which leaves 2719 1/2; in other words, I just deducted the amount that had been taken out of the stock room and repacked from the total amount that was stated to be packed, showing the amount of repacked goods. Now all I had to do was to copy that off, it had been figured once. The value of the repack was $70.00; that was mere copying. Now, the rubber insert entries, I got those that morning, the number of pencils packed during the wwek ending April 24th; that is Thursday, April 24th; that insert rubber is a rubber stuck directly into wood with a metal tip or ferret to hold it in. I have to go through all of this date, that being an awfully tedious job, not a hard job, but very tedious; it eats up time. I had to go through each one of these, and not only have to see the number, but I have to know whether it is rubber insert or what it is, and then I put that down on a piece of scratch paper, and place it down here, in this case it was 720 gross. Then the rubber tipping, that means tipped with rubber; that is the rubber that is used on the medium priced pencils that have the medium prices, we ship with the cheap shipping. I had to go through this operation again; a tedious job, and it eats up time it is not hard, but it is tedious. I had to go through that again, to find out the amount of tip rubber that was used on this amount of pencils . Then I had to go through the good pencils. Now, it has been insinuated that some of these items, especially this item, if I remember correctly--that when I have gotten two of the items, I can add it all up and substract from the total to get the third by deduction, but that is not so. Of the pencils that still remain unaccounted for, there

are many pencils that don't take rubber at all. There are jobs that don't take rubber on them, plain common pencils, going pencils that don't have rubber on them at all, and I have to go through all of that operation, that tedious operation again that eats up so much time. Then there is the lead of the various kinds that we use; there is good lead and cheap lead, the large lead and the thick or carbon lead, and the copying lead. That same operation has to be gone through again. Now this sheet (exhibiting) (Deft's Ex. 3) is where the expert accountant said I made a mistake. I had to go through with each of these pencils to see if they were cheap rubber or if they were good lead or the copying lead. So I had to go through this same operation and re-add them to see that the addition is correct before I can arrive at the proper figure. The same way to find the good lead and the cheap lead, the large lead and the copying lead; that operation had to be gone through in detail with each and every one of those, and the same with each of the boxes, and that is a tough job. Some of the pencils are packed in one gross boxes and some in half gross boxes, and, as I say, we use a display box, and there are pencils that are put in individual boxes, and we have to go through carefully to see the pencils that have been packed for the whole week, and it is a very tedious job. Now in these boxes, there is another calculation involved, and then I have to find the assortment boxes, but that is easily gotten. Then I have to find out whether they are half gross boxes or one gross boxes , and then reduce them to the basis of boxes that cost us two cents apiece; reduce them to the basis of the ordinary box that we paid two cents a box. After finding out all the boxes, then I have to reduce that to

some common factor, so I can make the multiplication in figuring out ~~the cost~~ at two cents. That involves quite a mathematical manipulation. Then I come to the skeleton. Skeletons are no more than just a trade name. They are just little cardboard tiers to keep one pencil away from the other, ~~that is~~ all a skeleton is. I have to go through and find out which pencils are skeletons. If it is a cheap pencil, they are just tied up with a cord, and there are pencils in a bunch, and there are pencils that we don't use the skeleton with. That must all be gone through and gotten correctly, or it will be of no worth. Then comes the tip delivery, the goods and the sheet delivery, which is gotten from this report from Mr. Lemmie Quinn that I showed you before. Then there is another entry on this sheet of the tips used and I can give you a clear explanation of the manner that I arrive at that. You can't use tips when you don't have some rubber stuck in it, so I just had to go through the rubber used to find that. Then we have what we call ends; there are a few gross of them there. Then the wrappers. Pencils that are packed in the individual one dozen cartoons don't take wrappers; they are in a box. Pencils that are packed in the display boxes don't take a wrapper, they just stick up in a hole by themselves. The cheap pencils are tied with a cord and they don't take any wrapper, so the same operation, the same tedious operation had to be gone through with that to get at the number of wrappers, and then the different number of gross and the number of cartoonsboxes used in the same way. On the right-hand side of this sheet you notice the deliveries (Deft's Ex. 3). There is the lead delivery from the Bell Street plant and the Forsyth Street plant. This doesn't mean the amount of lead used in the pencils packed for this week only, but it shows the amount of

our lead plant delivery, for information. Then the slat delivery, that is not worked out simply because that is Mr. Schiff's duty to work that out and that it is a very tedious and long job and when I started in to do that I couldn't find the sheet showing the different deliveries of slats from the mill, so I let that go, intending to put that in on Monday, but on Monday following I was at the police station. I took out from this job (Deft's Ex. 4b) sheet the correct amount of gross packed--791 as figured there--correct value $396.75, as shown on this sheet, and the average is that one, that I didn't carry out to two decimal places; I didn't carry it to but one. Then from the payroll book I got the payroll for Forsyth Street and Bell Street, and then as a separate item took out from the payroll book total, separate the machine shop, which that week was $70.00. The shipments were figured for the week ending April 24th on this sheet, as far as I--oh, you notice the entry of the 24th; those are those invoices, the first piece of work that I explained to you, sitting up there; I explained from the chair, and couldn't come down here; that's the piece of work, that I explained to you how we did it in triplicate. That's the work that I did that morning, and completed, as I told you, that each of the invoices was wrong, and I had to correct them as I went along, simply because I needed it on the financial sheet, and there's where I entered it on the sheet as shipments; I needed that so as to make the total; and that's where I entered it--shipments, the 24th, on this sheet during the afternoon $1245.57, and totalling it up, the pencil factory shipped that week $5438.28. Those amounts you see are entered right in there, and the

handed in by Mr. Irby, and the value of the shipments are gotten

from this sheet, the last entry on which I had to make.

Then the orders received. The entry of the orders received that day involved absolutely no more work on my part than the mere transfer of the entries. On this big sheet (Deft's Ex . 5) I have here the orders received are in terms of "Total gross" and "Total value," and we need that to compare the amount of shipments with the amount of orders we are receiving to see whether we are shipping more than we are receiving, or receiving more than we are shipping. That amount is given here. Down there it tells you the total amount of dollars and cents of all the orders received, total gross, and the average. The average is important, though it is usually taken over on a separate paper on Friday morning to Mr. Sig Montag so that he knows how sales for the week have come out long before he receives the financial. He don't receive the financial usually until Monday morning, when I go over there.

Now, one of the most intricate operations in the making up of the financial report is the working out of the figures on that pencil sheet, as shown by that torn little old sheet here, that data sheet (Deft's Ex. 3). Now with this in hand, and with that pencil sheet record of pencils packed (Deft's Exhibit 7) the financial report is made out. This sheet (the financial) (Deft's Ex. 2), I may say is the child of my own brain, because I got it up. The first one that ever was made I made out, and the fact that there is a certain blue line here and a certain red line there, and a black line there, and certain printing on it, is due to me, because I got this sheet up myself. On one side you notice "Expense", or two main headings "Expense" "Materials." Together they comprise the expense for the week. On the other side, like the debit

and credit sides of a ledger is the "value", "gross Value" of the goods which have been packed up during a given week. Down here below you will notice "Less repacked." You remember the repacked, that I told you about, the pencils taken out of stock and repacked to make them move better. That value is deducted, so that it wont allow error to enter into this figure. Then we take off 12% down at the bottom. That 12% allows for freight allowances, cash discounts, inside trade discounts, and possibly other allowances, and gives us the net value or the net amount of money for those pencils, which the treasury of the Pencil Company receives in the last analysis.

On the other side is the materials, the cost of materials, that went into the making of those pencils, based on the amounts and kinds of pencils, which of course, as in this instance, comes from the data sheet.

The first item under "expense" items is "Labor," and the labor is divided, as you all know, into the two classes, direct and indirect. The direct labor is that, which goes directly into the making of the pencils themselves, and the indirect constitutes the supervising, shipping, office, clerical help, and so forth. These figures are brought directly from the pay-roll. The indirect labor, however--as in this case $155.00--is an empirical figure, a figure, which we have found out by experiment to be the correct figure, and we arbitrarily decide on it, and keep it until such time as we think we ought to change it and then change. The burden that a business has to carry is the fixed charges, the expense that it carries, irrespective of whether it will produce two gross or 200,000 gross, like rent, insurance, light, heat, power, and the sales department. The sale[illegible]ses on

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salesman sells little or big bills; his salary goes on and his expense goes on, Rent, heat, light, power, sales department men, and all that, is figured out, as you could find by looking back, continuously from week to week, and there is no work other than jotting it down to figure in this total..

The repair sundries is also arbitrary at $150.00. The machine shop, however, is available. It appears alongside of "Investment". "Investment is crossed out, and "Machine shop" written in. There is a reason for that. The time was at the inception of our business when every machine built by us was so much additional addeded to the value of our plant. In other words, it was like investing more money in it, in the plant, but the time came, when we quit making machines, and then we simply kept them in repair, and we charged that to expense, crossing out "investment" and putting down "Machine Shop" as an expense item.

The material is arrived at on the bases, gross, net. The gross basis is the total amount of pencils packed, as per the packing reports handed in by Miss Eula May Flowers, and the net basis is the total amount, total gross, packed by report of Miss Eula May Flowers less the amount of repacked, of which I have spoken. In this case the gross amount was 2851 gross, net 2830 1/2 gross, the smaller being the net figure. The slats are figured at 22 cents per gross, and that's simply taking the 2830 1/2 gross down to the slat item, and multiplying that by 22 cents, and putting it down to the materials. Then from the figures derived from the packing reports we figure rubbers used, according to the character or grade of the pencil manufactured; 6 1/2 ¢ cheapest, 9 ¢ medium, 14 ¢ high grade.. Then comes the tips. The tips [illegible] the amounts of rubber used

in ferrules, the medium rubber, and the better class of rubber. In other words, it's gotten by adding together the rubber at 9 cents a gross, and the rubber at 14 cents a gross, and adding together the total amount of gross used. And you see it says "materials", and it is reckoned at 10 cents; in other words, the materials used in making the tips in that tip plant we figured at 10 cents a gross, and the labor is included in that payroll item up above. Then there is 25 gross of these medium ends.

Then the lead, which is used, is taken from this sheet (Deft's Ex. 4a), multiplying 15 cents for the better lead and 10 cents for the cheaper lead. Then 5 cents a gross has been figured out after months of careful keeping track of what we use to include such materials as shellac, alcohol, lacquer, aniline, waxene, and oils--that's oils used in manufacture, not for lubrication of transmission or machinery. It also includes that Nascolene compound, of which we have heard so much. That's included in this 5 cents per gross.

Then comes the boxes at 2 cents a gross, then assortment boxes at an average of 4 cents a gross; then comes wrappers at one cent a gross; that is the number of wrappers used in wrapping up one gross of pencils are worth one cent. Then cartons, boxes, holding one gross of pencils, figured at 28 or 18 cents. Then down below "payroll Bell Street $173.21. Then show what what was delivered, just a plain copy of what I have on this sheet, I have been looking at the sheet for the week ending April 17th, but it is practically the same way. I have here down on the bottom of this financial made out the 26th waht's delivered, good and cheap. There is no entry there. You will remember I said I didn't work that out. I put that out there preparatory to working out that Monday

morning before I would take it over. Then it tells tips delivered from Mr. Quinn's report.

Now on the right side you will notice this entry, "Better grades, gross, net." From this small sheet we get total of better grades 710, gross. Then right below it says 700 gross net. There were 710 gross, and on that repacked sheet I called out there 10 gross good goods repacked, therefore the difference of 10 gross. Then we look on down this pencil sheet, cut down each and every one of the items accordingly--you will notice in some places I marked some items, "142 1/2 2-lo-X"--and so on down the sheet, in this case there were 29 or 30 different items, all of which had to have the prices correctly traced down, extensions correctly made, checked, re-checked, added up, and totaled; and checked back, and the re-pack had to be deducted, after which the 12% had to be figured out, and deducted, giving the net value of the production for that week. Then we take the net value of the production that week, and from it take the total amount of expense, and materials used, the expense including labor, rent, lights, insurance, and so forth, and, if this expense is greater than the value of the pencils, which we made that week, then the factory has operated that week at a loss. In this case a deficit above, showing that that week we operated at a loss. The shipments were gotten off down there from this sheet. Those are my initials up on the top. (Deft's Ex. 11)

Now, besides the making of this large sheet here proper, there is in the making of the financial report three other sheets, (Deft's Ex. 11), that I usually make out. Now one of those little sheets, that are usually made--and I want to call your attention to the fact that I didn't typewrite this [illegible]

filled these figures in; I am no typewriter; I cannot operate a machine; I have two or three dozen of those very now and then typewritten together, and keep them in blank in my desk; I didn't typewrite those on that day, or any other day; I just filled these figures in those blanks--this is the sheet (Defendant's Ex. 11) called the comparison sheet between 1912 and 1913, which is nothing more nor less than taking the vital figures, the vital statistics of one week of 1913, and comparing them with the same week of 1912, to see how we have improved or gone backward every week one year apart. Of course the putting of these down involves going back into the proper week in this folder, and getting that out. However, I noticed the week in 1912 corresponding with the week of April 24th, in 1913, was a week of 45 hours instead of 50 hours.

In addition to that, I make out two condensed financial reports, that is give themain figures. I didn't typewrite this sheet either; as I say, I cannot operate a machine. I just filled in the figures, which have to be picked out from this large financial report, fill them in for the week ending--that does not show the date it was made, but it shows for the week ending April 24th, the production in dollars, the total expenditure in dollars, the result, which in this week, as I wrote in "deficite" in dollars; show the shipments, which in this week were very good, and the orders received, which were gotten from that great big sheet. Those were enough fig res for a director or stockholder of the Company to receive, and are practically the only figures he is really interested in. He don't care to hear how much we make of this pencil or that pencil. The only thing he is interested in is dividends, if we are able to give them to him. One of these sheets I always make out and mail to Mr. Oscar Pappenheimer, who was

formerly a member of our Board of Directors, though he is not how. The other sheet I always invariably sent to my uncle, Mr. M. Frank, no matter where he is, who is President of the Company. On this particular Saturday, my uncle had during the week ending April 26th gone to New York, stopping at Hotel McAlpin, preparatory to taking his annual trip abroad for his health, he being a sick feeble old man. When I made out that financial, I really made out two small ones, and I put one in an envelope, addressed it to Mr. Oscar Pappenheimer (Deft's Ex. 45), c/o Southern Furniture Company, Atlanta, Georgia; the other one w as put in this envelope (Deft's Ex. 44) which you see right here, and sent to my uncle, Mr. M. Frank together with a letter, which I wrote him, after having finished the financial sheet, the sheet showing the comparison of vital statistics for the same weeks of 1912 and 1913, and after having completed these two small condensed financial reports (Deft's Ex. 42). I wrote that letter to my uncle, and I sent him that report, and also sent a price list, to which I referred in that letter; hence the size of that envelope. I am going to show you one of those price-lists. Its a great big sheet when it is folded up, it is much too large for the ordinary size; hence the reason I used a great big envelope like that. I addressed that letter to my uncle Mr. M. Frank, C/o Hotel McAlpin, Greely Square, New York, N.Y., as has been identified.

This ends practically the work on the financial. After finishing the financial, I wrote these letters, and sealed them, and placed them aside to post. After finishing the financial, I folded this big report up, and put it with the comparison sheet (Deft's Ex. 11) for the week of 1912 and [illegible] in a large envelope, addressed it to

Mr. Sig Montag, General Manager of the Pencil Company, and put it under my inkwell, intending to take it over on the morning of Monday following.

I then came to the checking up of the cash on hand and the balancing of the cash book. For some reason or other there are no similar entries in this book after those of that date. That's my handwriting, (Deft's Ex. 40) and I did that work on Saturday afternoon, April 26th, as near as might be between the hours of 5:30 and 5 minutes to 6:00. Now in checking up it didn't take me an hour and a half. I did that in about 25 minutes. In checking up the cash the first thing to do is to open the cash box. We have a little coin bag in there, and there was in cash actually on hand that day about $30.54; that's all there was. That's all there could have been, and that $30.54 was to the best of my recollection composed of about three dollars in one-dollar bills, about four or five dollars in quarters andhalves, and the balance dimes, nickels, and one-cent pieces. That's some job to count that, not only to count it, but to separate the different denominations, and stack it up into stacks of a dollar. I did that, stacked them up, checked them, and re-checked them, and I took a piece of paper--I haven't that paper--and jotted down the amounts. To that had to be added the amount that was loaned. In this case there was only one loan, that which I loaned to Mr. White that afternoon. That would eventually come back to the cash box. If there had been any errors in the payroll the night previous, I would havehad to make it good from the cash-box, and it would have gone under the item of "extra payroll." I don't know whether that occurred this week or not. However, I added up the total cash I actually had on hand then--$28.54--and that $2.00 loaned to Mr. Wh

it up to $30.54, the actual amount, which the cash book showed. Now on the left-hand side of this book, the debits for the week between April 21st, which was Monday, previous to April 26th, it being a record simply of the petty cash used by us, showed that we had a balance on hand the Monday morning previous of $39.85. On April 22nd we drew a check for $15.00, and on April 24th we drew another one for $15.00. I mean by that that we would draw a check for $15.00, and go over to Mr. Sig Montag to sign it; so that during that week all we got from the treasury was $30.00, and $39.85 already on hand, made $69.85, which was the total amount we had to account for. When we spend, of course we credit it. There once was a time, when, as we paid out money, we would w ite it down on this book. We found it was much better, however, to keep a little voucher book, and let each and every person sign for money they got, and we have not only this record, but this record on the receipt book (Deft's Ex. 40). The first entry on this is 15 cents there--on the 19th of April the National Pencil Company gave 15 cents to Newt Lee for kerosene. Newt Lee's name is there, but he didn't write it. I wrote it; my initials are on it. He was there when he got the money, but I thought he couldn't write, and I signed his name. Whenever I sign anybody's name, my initials are under it. The next item is 75 cents for typewriter rent, next item $2.00 drayage 24th of April. That is Truman McCreary's receipt--he has a very legible handwriting, and one of the little stamps stamped on there. The next item is for cases; some negro signed his name down there. So on throughout the book, cases, express, drayage, postage, parcels post, etc. Now, after counting the money, finding how much actual cash there was in the cash box, [illegible] little voucher book, and

lump the different items that were all alike together (Deft's Ex. 10). This sheet has been identified and explained, and you notice that there were four items of drayage grouped together, the total being $6.70. I just extend that over to the right there $6.70. Then I don't have to put drayage down in this book four times; just make one entry of drayage for the four times we paid drayage together, which gives the same total, and makes the book look a great deal neater. So on throughout, five items of cases, two items of postage, two items of parcels post, one item of two weeks' rent on an extra trypewriter, 45 cents for supplies for Mr. Schneegas' department, foreman on the third floor, 85 cents for the payment of a very small bill to King Hardware Company, $11.50 to a tinsmith for a small job he had done, 5 cents for thread, and ten cents for carfare oneitem. Then this young man, Harold Wright, of whom I spoke, omitted from the payroll, I added this up, and that was $39.31, and transferred it from here to there. I then made the balance in the usual way , checking it against the money on hand, that I had in the cash box that night, and after checking and re-checking it, and finding no money missing from any source that we could trace, found that it was $4.34 short of the cash box, which was due to shortages in payroll in the past three months.

I finished this work that I have just outlined at about five minutes to six, and I proceeded to take out the clock strips from the clock which were used that day and replace them. I won't show you these slips, but the slips that I put in that night were stamped with a blue ink, with a rubber dating stamp, "April 28th," at the bottom, opposite the word "date." (Deft's Ex. 1), Now in reference to these time slips

which was put into the clocks that night, --Saturday night, - no one was coming down to the factory on Sunday, as far as I knew, or as far as custom was, to put the slips into the clocks and therefore, we had to put the slips into the clock dated with the date on which the help were coming into the factory to go about their regular duties and register on the Monday following, which, in this case, was April 28th. Now, on one of these slips, Newt Lee would register his punches Saturday night, and on Sunday night he would register his punches on the other. His punches on Monday night would be registered on two new slips that would be put into clock on Monday night. As I was putting these time slips into the clock, as mentioned, I saw Newt Lee coming up the stairs, and looking at the clocks, it was as near as may be six o'clock,--looking straight at the clock--; I finished putting the slip in and went back to wash up, and as I was washing , I heard Newt Lee ring the bell on the clock when he registered his first punch for the night, and he went down stairs to the front door to await my departure; after washing, I went down stairs,--I put on my hat and coat--got my hat and top coat and went down stairs to the front door. As I opened the front door, I saw outside on the street, on the street side of the door, Newt Lee in conversation with Mr. J. M. Gantt, a man that I had let go from the office two weeks previous. They seemed to be in discussion, and Newt Lee told me that Mr. Gantt wanted to go back up into the factory, and he had refused him admission, because his instructions were for no one to go back into the factory after he went out, unless he got contrary instructions from Mr. Darley or myself. I spoke to Mr. Gantt, and asked him what he wanted, he said he had a couple of pairs of shoes, black pair and tan pair, in the shipping room. I told Newt

Lee it would be all right to pass Gantt in, and Gantt went in, Newt Lee closed the door, locking it after him,--I heard the bolt turn in the door. I then walked up Forsyth Street to Alabama, down Alabama to Broad Street, where I posted the two letters, one to my uncle, Mr. M. Frank and one to Mr. Pappenheimer, a few minutes after six, and continued on my way down to Jacobs Whitehall and Alabama Street store , where I went in and got a drink at the soda fount, and bought my wife a box of candy. I then caught the Georgia Avenue car and arrived home about 6:25. I sat looking at the paper until about 6:30 when I called up at the factory to find out if Mr. Gantt had left. I called up at 6:30 because I expected Newt Lee would be punching the clock on the half hour and would be near enough to the telephone to hear it and answer it at that time. I couldn't get Newt Lee then, so I sat in the hall reading until seven o'clock, when I again called the factory; this time I was successful in getting Newt Lee and asked him if Mr. Gantt had gone again, he says, "Yes," I asked if everything else was all right at the factory; it was, and then I hung up. I sat down and had supper, and after supper, I phoned over to my brother in law, Mr. Ursenback, to find out if he would be at home that evening, I desired to call on him, but he said he had another engagement, so I decided to stay home, and I did stay home reading either a newspaper or the Metropolitan Magazine that night. About eight o'clock I saw Minola pass out on her way home. That evening, my parents in law, Mr. and Mrs. Emil Selig, had company, and among those present were Mr. and Mrs. Morris Goldstein, Mr. and Mrs. M. Marcus, Mrs. A. E. Marcus and Mrs. Ike Strauss; Mr. Ike Strauss came in much later, something after ten o'clock. I believe sat reading in the hall until about a quarter to ten, when I

lighted the gas water heater preparatory to taking a bath, and then continued reading in the hall; at 10:30, I turned out the gas, went into the dining room, bade them all good-night, and went upstairs to take my bath; a few minutes later, my wife followed me upstairs. (At this point the jury retired for a short intermission.) I believe I was taking a bath when you went out,--on Saturday night; and after finishing my bath, I laid out my linen to be used next day, my wife changed the buttons from my old shirt to the shirt I was to wear the following morning, and I retired about eleven o'clock. The next day, Sunday, April 27th, I was awakened at something before seven o'clock, by the telephone ringing. I got out of bed,--was tight asleep, it awaked me,--but I got out of bed, put on a bath robe and went down to answer the telephone, and a man's voice spoke to me over the phone and said--I afterwards found out this man that spoke to me was City Detective Starnes--said "Is this Mr. Frank, superintendent of the National Pencil Company?" I says, "Yes, sir," he says, "I want you to come down to the factory right away, "I says, "What's the trouble, has there been a fire?" He says, "No, a tragedy, I want you to come down right away;" I says, "All right," he says, "I811 send an automobile foryou," I says, "All right," and hung up and went upstairs to dress. I was in the midst of dressing to go with the people who should come for me in the automobile, when the automobile drove up, the bell rang and my wife went down stairs to answer the door. She had on,--just had a night dress with a robe over it. I followed my wife,--I wasn't completely dressed at that time,--didn't have my trousers or shirt on, and as soon as I could get together,--get my trousers and shirt on,--I went down stairs--followed my

and the man who I afterwards found out was detective Black, hung his head and didn't say anything. Now, at this point, these two witnesses, Mr. Rogers and Mr. Black differ with me on the place where the conversation occurred,--I say, to the best of my recollection, it occurred right there in the house in front of my wife; they say it occurred just as I left the house, in the automobile; but be that as it may, this is the conversation: They asked me did I know Mary Phagan, I told them I didn't, they then said to me, "didn't a little girl with long hair hanging down her back come up to your office yesterday sometime for her money,--a little girl who works in the tipping plant?" I says, "Yes, I do remember such a girl coming up to my office, that worked in the tipping room, but I didn't know her name was Mary Phagan." "Well, we want you to come down right away with us to the factory;" and I finished dressing; and as they had said they would bring me right away back, I didn't have breakfast, but went right on with them in the automobile, made the trip to the undertaking establishment very quickly--I mean, they made the trip down town very quickly, and stopped at the corner of Mitchell and Pryor Streets, told me they were going to take me to the undertaker's first, that they wanted me to see the body and see if I could identify the little girl. I went with them to the undertaking establishment, and one of the two men asked the attendant to show us the way into where the body was, and the attendant went down a long dark passageway with Mr. Rogers following, then I came, and Black brought up the rear; we walked down this long passageway until we got to a place that was apparently the door to a small room,---very dark in there, the attendant went in and suddenly switched on the electric

light, and I saw the body of the little girl. Mr. Rogers walked in the room and stood to my right, inside of the room, I stood right in the door, leaning up against the right facing of the door, and Mr. Black was to the left, leaning on the left facing, but a little to my rear, and the attendant, whose name I have since learned was Mr. Chessling, was on the opposite side of the little cooling table to where I stood-- in other words, the table was between him and me; he removed the sheet which was covering the body, and took the head in his hands, turned it over, put his finger exactly where the wound in the left side back of the head was located,--put his finger right on it; I noticed the hands and arms of the little girl were very dirty,--blue and ground with dirt and cinders, the nostrils and mouth--the mouth being open--nostrils and mouth just full of saw-dust and swollen, and there was a deep scratch over the left eye on the forehead; about the neck, there was twine,--a piece of cord similar to that which is used at the pencil factory and also a piece of white rag. After looking at the body, I identified that lit tle girl as the one that had been up shortly after noon the day previous and got her money from me. We then left the undertaking establishment, got in the automobile and rode over to the pencil factory. Just as we arrived opposite the pencil factory, I saw Mr. Darley going into the front door of the pencil factory with another man, whose name I didn't know; we went up to the second floor, the office floor, I went into the innter office, hung up my hat, and in the inner office, I saw the night watch-man, Newt Lee, in the custody of an officer, who I think was Detective Starnes,-- the man who had phoned me. I then un-locked the safe and took out the payroll book and found that

work in the metal plant, and that she was due to draw $1.20, the pay-roll book showed that, and as the detectivehad told me that someone had identified the body of that little girl as that of Mary Phagan, there could be no question but what it was one and the same girl. The detectives told me then they wanted to take me down in the basement and show me exactly where the girl's body was found, and the other paraphernalia that they found strewed about; and I went to the elevator box,--the switch box, so that I could turn on the current, and found it open. In reference to that switch box being open or shut, it was open on that occassion, however,--I had given instructions to the factory to keep it open, and those instructions were given because a member of the fire department had gone through all that part of the city, and the National Pencil Company, among others, and told us that no switch box , no box in which an electric switch was situated, could be locked up, but had to be open, so it could be easily accessible in case of fire, so they wouldn't run any risk of electrocuting anybody, or if they wanted to move quickly, they could throw it on and start the elevator,--you couldn't lock it up, the firemen wouldn't know where the key was. However I turned on the switch, started the motor, which runs the elevator, going, then Mr. Darley and half dozen more of us and the detectives got on the elevator; I got on the elevator and I started to pull the rope to start the elevator to going, and it seemed to be caught, and I couldn't move it, I couldn't move it with a straight pull, and couldn't get it loose, so I jumped out , we all got off, and I asked Mr. Darley to try his hand,--he's a great deal larger man and a great deal stronger man than I was,--so he was successful in getting it loose--it

seemed like the chain which runs down in the basement had slipped a cog and gotten out of gear and needed somebody to force it back; however, Mr. Darley was successful in getting it loose, and it started up, and I goton and the detectives got on and I caught hold of the rope and it worked all right.

In the basement, the officers showed us just about where the body was found, just beyond the partition of the Clark Woodenware Company, and in behind the door to the dust bin, they showed us where they found the hat and slipper on the trash pile, and they showed us where the back door, where the door to the rear was opened about 18 inches. After looking about the basement, we all went back upstairs and Mr. Darley and myself got some cords and some nails and hammer and went down the basement again to lock up the back door, so that we could seal the factory from the back, and nobody would enter. After returning upstairs, Mr. Darley and myself accompained Chief Lanford on a tour of inspection through the three upper floors of the factory, to the second floor, to the third floor and to the fourth floor, we looked into each bin, and each partition, and each dressing room and each work room, and even passed through the metal room and looked into that very dressing room that has figured so prominently in this trial, and neither Mr. Darley nor myself noticed anything peculiar on that floor, nor did Sergeant Lanford , Chief of the Atlanta detectives, notice anything peculiar. We then returned to the front, and took out of the clock the slip on which Newt Lee had punched the evening previous, and that clock slip, of course, was dated April 28th.

I removed the clock slip from the clock, and in the center of the sheet, between the top and bottom, I remember the No.

133 and the number 134 (deft's Ex 41), I wrote on it "Taken out 8:26 A.M.," and two lines under it, with a casual look at that slip, you can't see it.

I can see it, When looking casually at that slip, you see nothing, and by the way, this sheet has been identified (Deft's Ex. 41), it is the one to which reference has been made so many times, and if you will look at it, you will see the date, April 28th, which we put on there on the evening of Saturday, April 26th, but if you will look opposite those numbers 133 and 134 and look very carefully, you can see where there has been erased from it what I put on there that morning in pencil to identify it, the words "taken out 8-26," and two lines, which it seems has been erased, but they couldn't erase it carefully enough, they even erased some of the printed line which runs across that sheet. This is the sheet (Deft's Ex 1) that I took out on Sunday morning, and looked at the clock to notice what time it was, and I laid it up against the dial of the clock, the glass face of the clock, and wrote down there the time which the clock then registered. I told them the sheet was just like you see it there, and I brought it to the office and Chief Lanford put it in his pocket; I then went into the office and got another time slip and dated it April 28th, similar to this one which was taken out, and which one it would replace, and put it back into the time clock to be used by the night watchman that night and by the help when they came to work on Monday morning. After taking this slip out (Deft's Ex. 1), Mr. Darley and myself casually looked over the slip to see if there were any errors, and we noticed over there that no successive numbers had been skipped, that is, the numbers on that slip are arranged successively, one, two, and three, and the time [illegible] one, and there was no single line skipped, but we didn't notice the actual time shown by the punch, we only noticed that the

successive punches were made at the time which the punches themselves showed. After putting a new slip in the clock, we all went out of the factory and went downstairs and locked the door, and I was going to go down to the office, to police headquareters, because the officers said they wanted to show me some notes which they said were found near the body and the pad lock and staple which they showed me had been withdrawn, and which they said had been taken down to the station the first time they had Newt Lee down there.

Now, gentlemen, I have heard a great deal, and so have you, in this trial, about nervousness, about how nervous I was that morning. Gentlemen, I was nervous, I was very nervous, I was completely unstrung, I will admit it; imagine, awakened out of my sound sleep, and a morning run down in the cool of the morning in an automobile driven at top speed, without any food or breakfast, rushing into a dark passageway, coming into a darkened room, and then suddenly an electric light flashed on, and to see the sight that was presented by that poor little child; why, it was a sight that was enough to drive a man to distraction; that was a sight that would have made a stone melt; and then it is suspicious, because a man who is ordinary flesh and blood should show signs of nervousness. Just imagine that little girl, in the first blush of young womanhood, had had her life so cruelly snuffed out, might a man not be nervous who looked at such a sight? Of course I was nervous; any man would be nervous if he was a man. We went with the officers in the automobile, Mr. Rogers was at the driving wheel, and Mr. Darley sat next to him, I sat on Mr. Darley's lap, and in the back was Newt Lee and two officers. We rode to headquarters very quickly and on arrival there Mr. Darley went

up to Chief Lanford's office where I sat and talked and answered ~~every one~~ of their questions freely and frankly, and ~~discussed the matter~~ in general with them, trying to aid and to help them in any way that I could. It seemed that, that morning the notes were not readily accessible, or for some other reason I didn't get to see them, so I told them on leaving there that I would come back that afternoon, which I ultimately did; after staying there a few minutes, Mr. Darley and myself left, and inasmuch as Mr. Darley hadn't seen the body of the little girl, we went over to Bloomfield's on Pryor Street and Mitchell, and when we went into the establishment, they told us somebody was busy with the body at that time and we couldn't see it, and we started to leave, when we met a certain ~~man~~ person with whom we made arrangements to watch the building, because Newt Lee was in custody at that time. Mr. Darley and I then went ~~over to Montag Brothers to see~~ if any of the Montags had come downtown that morning, we arrived at their place, and found the same was locked, and that nobody was down there. We walked from Montag's place on Nelson Street down to Mitchell and Forsyth Street, where I bade Mr. Darley good-bye, and I walked down Mitchell Street to Pryor, where I caught a Georgia Avenue car and rode to the house of Mr. Sig Montag, our General Manager, ~~corner of Glenn~~ and Pryor Streets, and called on Mr. Montag and discussed with him at length and in detail what I had ~~seen that morning~~ and what the detectives had to say. After my conversation with him, I returned to my home at about a quarter to eleven, my home was 68 E. Georgia Avenue; I washed up and had my breakfast in company with my wife, in the dining room, and while I was eating breakfast, I told my wife of the experience I had had that morning. After I finished my breakfast, I left the house and went around to the home of Mr.

Wolfsheimer, and at Mrs. Wolfsheimer's house, we found quite a company of young people, and the conversation turned largely on what I had seen that morning; also, among those who were present, were Mrs. L. G. Cohen, Mrs. N. G. Michael, Mrs. Carl Wolfsheimer, Julian Michael, Philip Michael, Miss Helen Michael, Miss Virginia Silverman, Miss May Lou Liebman, Julian Loeb and Herman Loeb. After staying there about an hour with my wife, I went in her company to visit the home of my brother-in-law, A. E. Marcus, whose home is situated on Washington Street opposite the Orphans' home; on our arrival there, the nurse Lucy told us that no one was at home, and we would find them probably at the home of Mrs. Ersenberg; we then went over to the Ersenberg house, which is situated on the corner of Washington and Pulliam Streets, and visited at that place, and saw Mr. and Mrs. A. E. Marcus, Mr. and Mrs. Chas. Ersenberg, Harold Marcus, Mr. and Mrs. Ben Ersenberg. Of course, the conversation was about the little girl that had been killed in the Pencil Factory basement that morning, of which they had heard, and we discussed it generally, although it was at that time as much a puzzle to me as it was apparently to everybody else. After staying here until about one o'clock or a little after, I returned with my wife to my home at 68 E. Georgia Avenue, where we took our lunch together with my parents-in-law, with Minola McKnight serving. After dinner, I read a little while, and finally caught the ten minutes to three Georgia Avenue car going downtown. I got off at the corner of Pryor and Mitchell Streets, and went into the undertaker Bloomfield's, where I saw a large crown of people nearby on the outside; on entering I found quite a number of people who were working at the Pencil Factory, among whom were Mr. Schiff, Herbert Schiff,

Viginci. I chatted with them a few minutes, and I noticed that the people who were going in to see the body were standing in line and movingin, and that others from the factory were going in and I thought I would go in too and pay my respects, and I went and stood in line, and went into the room again and staid a few minutes in the mortuary chamber; the little girl had been cleaned up, her hair had all been cleaned and smoothed out, and there was a nice white sheet over the rest of her body. I returned to the front of the undertaking establishment, and stood chatting with Herbert Schiff and Mr. Darley until the party with whom we had made the arrangements came up, and we gave them the keys with instructions as to watching the plant that night. Then Mr. Darley and Mr. Schiff and myself went down to police headquarters and went up into Chief Lanford's office, and the three of us stood talking there, answering all sorts of questions that not only Chief Lanford, but the other detectives, would shoot at us, and finally Mr. Darley said he would like to talk to Newt Lee; then he went into another room, and I presume they brought Newt Lee up from the cell, so he could talk to him. After Newt Lee was gone, the detectives showed us the two notes and the pad back with still a few unused leaves to it, and the pencil that they claimed they had found down in the basement near the body. Of course, Mr. Schiff and myself looked at those notes and tried to decipher them, but they were written exceedingly dim, and were very rambling and incoherent, and neither of us could recognize the handwriting, nor get any sense out of them at all. One of these notes (State's Ex. y) was written on a sheet of pencil pad paper, the same kind as that of this sheet which still remained on the pad back; the other was written on a sheet of yellow paper, apparently a yellow sheet

from the regulation order pad or order book of the National Pencil Company (State's Ex. Z); this sheet was a yellow sheet with black ruling on it, and certain black printing at the top. These are the two notes, (indicating papers.)

At the top of these notes where it showed the series and date, and you can see it has either been worn out or rubbed out, but the date was originally on there, and down below here is the serial number; now, both of those notes were written as though they had been written through a piece of carbon paper and the date said Jan. 8th, 1911; the order number is so faint or erased here that I can't even see what that is, but there is no trace of a date on this one at all, but it was there distinctly visible when Mr. Schiff and myself looked at it. We continued answering any questions that the detectives wished to put to us looking to a possible solution of the mystery, when Mr. Darley came in and said if they didn't want him any further, he would go off, that he had an appointment. A few minutes thereafter, Mr. Schiff and myself left police headquarters, and went down Decatur Street to Peachtree Street, and down Peachtree Street over the viaduct to Jacob's Alabama and Whitehall Street store, and went in, and each of us had a drink, and I bought a cigar for each of us at the cigar counter. Mr. Schiff had an appointment to meet some friends of his at the Union Depot that afternoon, and it was a little too early, so we took a walk around by the Pencil Factory, walking up Alabama to Forsyth Street and down Forsyth Street on the side opposite from the factory, to the corner of Hunter and Forsyth , where we notice the morbid crowd that had collected out in front of the factory; we stood there about a minute or two and then continued walking, and then went up East Hunter [illegible] back Whitehall to the

corner of Whitehall and Alabama, where Mr. Schiff waited until I caught an Alabama Street or Georgia Avenue car and returned to my home. I returned to my home about a quarter to four, and found there was no one in, as my wife had told me that if she wasn't at home, she would probably be at the residence of Mr. Ersenberg, I proceeded over there, coming up Washington Street in the direction of the Orphans' Home, and on Washington Street, between Georgia Avenue and the next street down, which I believe is Bass Street, I met Arthur Haas and Ed Montag and Marcus Loeb, who stopped me and asked about things, they had heard about the little girl being dead in the Pencil Factory, and I stopped and discussed it with them, and I was about to leave them when Henry Bawer came along in his automobile and stopped where I was, and he asked me what I knew about it, and I had to stop and talk with him; and I finally got loose from him and went over to the home of Mr. Ersenberg on the corner of Pulliam and Washington Terrace, and when I arrived there, I found Mr. and Mrs. A. D. Marcus, Mr. and Mrs. Charlie Ersenberg, and my wife, and a little later Mr. and Mrs. Sig Selig came in. Here again the subject of conversation was what I had seen that morning and what the detectives had told me, and what I had told them and how the little girl looked, and all about it, as far as I knew. I staid there until about 5 o 'clock, when Mr. Ike Haas, the Vice-President of the Pencil Factory, telephoned me to come over to his house, and I thereupon went over there, and on arriving at Mr. Haas' home, which is situated on Washington Street right across the way from the Orphans' Home, I talked to him about what I had seen that morning, and what I could deduce from the facts that were known and what the detectives had told me; I staid there until about 6 o'clock. On arrival at Mr. Haas',

~~I saw~~ there his wife, Mrs. Haas, his son Edgar Haas, and a cousin of my wife's, Monteclore Selig. My wife had left word with Mrs. Haas that I should call for her at the residence of Mr. Marcus, which is next door, or just a few doors away, and I went by and called for my wife at six o'clock and a few minutes before seven my wife and I left the residence of Mr. Marcus and started down Washington Street towards Georgia Avenue on our way home. On our way home, we met our brother-in-law, Mr. and Mrs. Chas. Eisenberg, going to the house from which we had just left. We reached home about seven or a little after for supper. After supper, I started to read the paper; between 8 and 8:30, I phoned up to my brother-in-law, ~~Alex Marcus, and~~ asked him if he would come down, but he said he thought he would not that evening, on account of the rain. I continued reading there in the hall that night or evening. There was company at the house of my father and mother-in-law, among the company being the following people, to the best of my recollection, Mr. and Mrs. Paul Liebman, Mr. and Mrs. Ike Strauss and Mr. and Mrs. Carl Wolfsheimer. About ten o'clock, all the company left, and I went upstairs with my wife and retured about ten o'clock.

The next morning, I arose about seven o'clock, and washed and shaved and dressed, and while I was so occupied, the door bell rang, and my wife again answered the door, and there were two detectives down there, one was John Black, and the other, I believe, Mr. Haslett, Haslett of the city detectives; I finished dressing and went downstairs, and they told me they wanted me to ~~step down to headquarters with them~~, and I told them I would, but ~~I stopped and got my breakfast~~, finished [illegible] before I went with them. We

walked from my home on Georgia Avenue down to Washington Street down to police headquarters, walking the whole way. On the way down, I asked detective Haslett what the trouble down at the station house was, and he said: "Well, Newt Lee has been saying something, and Chief Lanford wanted to ask you a few questions about it;" and I said; "What did Newt Lee say?" "Well, Chief Lanford will tell you when you get down there." Well, I didn't say anything more to him, went right along with him, and when I got down to police headquarters, I sat in one of the outer offices that the detectives use, it wasn't the office of Chief Lanford, he hadn't come down yet, that was about between 8 and 8:30 when I got down there. Well, I waited around the office possibly an hour, chatting and talking to the officers that came in and spoke to me, but I still didn't see anything of Chief Lanford; and bye and bye, probably after an hour, half past nine perhaps, Sig Montag and Herbert Haas, a couple of my friends, came up and spoke to me; I was coversing with them, and possibly at 10 o'clock, I saw Mr. Luther Rosser come up, and he said: "Hello Boys, what's the trouble?" And Mr. Haas went up to him and spoke to him, and they were talking together and a few minutes later Chief Lanford, who had in the mean time arrived, and who seemed to be very busy running in and out answering telephone calls, came in and says: "Come here," and beckoned to me; and I went with him and went into his room, in his office, and while I was in there, to the best of my recollection, anyhow it is my impression now, that this very time slip (Deft's Ex. 1), on which at that time that "taken out at 8:26," with the two lines under it, had not been erased, was shown to me, and in looking over it and studying it carefully, I found where the

interval of an hour had occurred three times during the time that Newt Lee had been punching on that Saturday night, April 26th. When I had first looked at it, I only noticed that every line had a punch mark on it, but I didn't notice what time the punch marks themselves were on; this time I studied the slip carefully, it was the same slip I had taken out of the clock, Chief Lanford or one of the officers handed it to me at police headquarters, which I absolutely identified with the writing which was on it, which you can very readily see if you look now, even though it has been erased. There seemed to be some altercation about Mr. Rosser coming in that room, and I heard Mr. Rosser say: "I am going into that room, that man is my client;" that was the first intimation I had that Mr. Rosser was going to look after my interests in this matter. Chief Beavers stated that he wanted me to give him a statement, and he said: "Mr. Frank, will you give us a statement?" And I said: "Certainly, I will give them a statement, I considered it only right that anybody that was at that factory that day should give the police a statement, telling who he had seen, where he had gone and what he had done; and I (State's Ex. B) gave them a statement freely and unreservedly, while I had no idea that I had to make a statement at that time, I did give it to the very best of my ability, freely, and answered every question that was put to me. Mr. February was sitting on the opposite side of the table from where I was sitting, Chief Lanford was sitting at a desk, and Mr. Rosser was sitting quite a distance away, probably 25 feet, sitting in the front window with his back to us. After I had given the statement, several of the officers came into the room, among them being Chief Beavers, and Chief Beavers and Chief Lanford and Mr.

Rosser were apparently having a sort of conversation, and I overheard Mr. Rosser say: "Why, it is preposterous, a man who would have done such a deed must be full of scratches and marks and his clothing must be bloody." I imagine Mr. Rosser must have had an inkling that they were suspicious of me, and as soon as I heard that, I turned and jumped up and showed them my under clothing and my top shirt and my body, ~~(I bared it to them all that came within the range of their vision, I had everything open for them, and all they had to do was to look and see it.)~~ After that, Mr. Rosser insisted that two of the detectives, Mr. Black and another detective, ~~accompany~~ Mr. Haas, Mr. Herbert Haas, and myself to my home and look over my soiled clothing for the past week, which I anticipated had not been given to the wash woman. They complied with this request; Mr. Black and another tetective and Mr. Haas and myself went over to the corner of Hunter andWashington Streets, and ~~caught the Washington Street~~ car and rode to Georgia Avenue and went to my home, and on this car my mother-in-law was sitting, returning to her home from town. On reaching 68 E. Georgia Avenue, I found there my wife's grandmother, Mrs. Cohen, and my father-in-law, Mr. Selig. The detectives immediately went upstairs to my room with Mr. Haas and myself, and I took the laundry bag in which my soiled laundry is always ~~kept~~ and emptied it out on the bed, and they examined each and every article of clothing that I had discarded that past week, and I again opened the clothing which I was then wearing, and which was the brown suit which I have here, this brown suit (Deft's Ex. 49) is the same suit I wore that Saturday , April 26th, and Monday April 28th, and I have worn that suit continuously since then until the weather became so hot, and it has neither been

to you for your examination. The detectives were evidently perfectly well satisfied with what they had seen there, and of course they left without any further remarks with Mr. Haas. I went downstairs and conversed with my folks down thereuntil dinner time, which was served to my father-in-law and my mother-in-law and my wife and myself by Minola McKnight. About that time, Mr. and Mrs. Wolfsheimer came in and conversed with us, Mr. Wolfsheimer telling me that he would take me downtown that afternoon in his authomobile. After dinner, I telephoned down to the office and telephoned to Mr. Schiff, and told him to get Mr. Montag's permission for the Pencil Company to put on a detective, preferably a Pinkerton detective, to work with and assist the city detectives in ferreting out the crime, as an evidence of the interest in this matter which the National Pencil Company was taking, I thought it was no more than we ought to do, and I also told Mr. Schiff I would be down town between half past two and three. After conversing with my folks, I went around the corner to Mr. Wolfsheimer's house and got in his automobile, and he took me down town to his place of business, which is situated on Whitehall Street near Mitchell, and I got out of the automobile there and walked over to the Forsyth Street plant of the Pencil Factory and on going into the office, I saw the following men there: Mr. Herbert Schiff, Mr. Wade Campbell, Mr. Darley--Mr. Holloway was out in his place in the hall, and Mr. Spilker and Mr. Quinn and Mr. Ziganke, these foremen were sitting around there because we had shut down there, as they told me, due to the fact that the plant was wholly demoralized, the girls were running into hysterics, they couldn't stick at their work, they were crying and going on over what had happened there

spoke to the boys who were there in the office about the happenings of that morning, of course, at more or less length. Then Mr. Quinn said he would like to take me back to the metal department on the office floor where the newspapers that morning had said that Mr. Barrett of the metal department had claimed he had found blood spots, and where he had found some hair. Mr. Quinn first took me to the little lathe back in the metal department, and explained to me that Mr. Barrett had told him just the same as he said here, that those strands of hair were so few in number that he didn't see them until he turned the handle and they wound around his fingers, and moreover that the position of the handle of the tool which that handle actuates on that tool, that small lathe, was in the same relative position to the work in the lathe as when they left it on Friday evening previous to that Monday. They then took me over to the place in front of the dressing room where it was claimed the blood spots were found. Now, I examined those spots, I didn't examine them standing up. I didn't depend on the light from the windows, but I stooped right down to those spots, and I took a strong electric flash lamp that we had around there and looked at them and examined them carefully, and I made a certain conclusion after that examination. Now, gentlemen, if there is any one thing in and about a factory, after my seven years of practical experience in factories, that I do know, it is the care and condition of factory floors. Now, take that metal plant for instance, that plant, as you know, is a place where we reform and shape and spin sheet brass, and of course, of necessity, we use a great deal of lubricant there; now, the lubricant that is used on this eyelet machine, these large machines that

form of lubricant which is known as Haskoline compound; now,

the main ingredients of that compound are, for practical purposes, soap and oil, and in use, it is diluted to a great extent with water so it can flow easily onto the tools or onto the metal, so that the tools that they use it on wont get brittle or smeared up, and that haskoline compound is carried to these little machines in the metal room, right almost up to that dressing room, and that haskoline remains on them and sticks to them, and you are apt to find that haskoline compound on the floor there anywhere around in that metal room near any of those machines, and when it is spilled on the floor, it is not scoured up, but it is just swept up with a broom. Moreover, a point that has not been brought out, so far as I know, right opposite that dressing room is kept the scrap brass, the scrap barrels in which the scrap metal from the eyelet machines is put, and that is full of that haskoline compound, that metal being put into the barrel of course, with the fluid on it, it flows to the bottom and is apt to get out of the bottom of that barrel onto the floor. But, getting back to the floor of the metal room, there is a constant spilling of lubricants, and, as I say, it is composed largely of soap and oil, and that floor, by actual experiment, is covered to a thickness varying from a quarter to half inch, that is, you can scrape away that much before you get down to the original color of the wood; moreover, on top of that grease soaked floor, there is dirt more or less, and then somebody comes along with a water sprinkler and sprinkles it to sweep it up, and they go over the top of that, it don't sink into the floor, and the result is there is coat after coat of grease and dirt on that floor. Now, with reference to those spots that are claimed to be blood that Mr. Barrett found, I don't claim they are not blood, they may have been, they

room, and we have had accidents there, and by the way, in reference to those accidents, the accidents of which we have had records, are not the only accidents that have happened there; for instance, a person cuts a finger; that is an accident, we give first aid to theinjured in the office, and we don't have any report on that, the only reports we have are of those accidents that incapacitate the health, where they demand the money for the time that they have lost due to the accident, and we will have our Employers' Liability Insurance Company to pay the employees, but where people just cut their fingers and they go back to work, we don't make any record of that, and we have people cutting their fingers there very often, and when they cut their fingers, their line of travel is right by that place where Mr. Barrett found those spots, right to the office. Now, we use paint and varnish around there, a great deal of it, and while I ~~don't say~~ that this is ~~not~~ blood, it may be, but it could also have been paint, I have seen the girls drop bottles of paint or varnish and have them break there on the floor, I have seen that happen right close to that spot, but the main point about it is this, gentlemen; when I got down and looked at it, you could have scratched away from the top of those dark stains an accumulation of dirt that was not the accumulation of a day or two days or three days or three weeks, but it was at least three months, from off the top of those spots, without touching the spot itself. Moreover, that white stuff was unquestionably , in my opinion, haskoline compound, and it was dry and it had to be put on, because it showed all evidences of having been swept, so it had to be put on the wood in a liquid state; if that had been fresh red paint, or if that had been fresh red blood, and ~~haskoline compound~~ that soap in it, which is a great

solvent, should have been put on there in a liquid state, it would not have showed up white, as it showed up then, but it would have showed up either pink or red, and where the spot of blood was, or whatever it was, that stuff was white, andnot pink or red.

I returned after making this examination from which I noticed two or three or four chips had been knocked up, the boys told me, by the police that morning; I returned to my office and gathered up what papers I had to take over to Montag Brothers, and I took over the financial report which I had made out the Saturday afternoon previous, and I talked it over with Mr. Sig Montag. I had a good long conversation with Mr. Montag with reference to the occurrences that morning and we decided that since the papers had stated that I was being detained at headquarters, it would be best to let my uncle, who was ill, and who is an elderly man, being over 70 years of age, and who was on the point of taking a trip to Europe, and I didn't want him to be unnecessarily alarmed by seeing in the papers that I was detained, and I wrote a telegram to Mr. Adolph Montag informing him that I was no longer in custody, that I was all right, and that he could communicate that to my uncle. That was so that my uncle should not get hold of an Atlanta paper and see that I was in custody and be unnecessarily alarmed.

I returned from Montag Brothers to the Pencil Factory, being accompained by one of the traveling men, Mr. Hines, Mr. Sol. Hines, and on my arrival at the factory I went up into the office and distributed the various papers all over the factory to be acted on the next day. In a few minutes Mr. Harry Scott of the Pinkerton detectives came in and I took him aside into my office, my private office, and spoke to him in

in the presence of Mr. N. V. Darley and Mr. Herbert Schiff. I told him that I expected that he had seen what had happened at the Pencil Factory by reading the newspapers and knew all the details. He said he didn't read the newspapers and didn't know the details, so I sat down and gave him all the details that I could, and in addition I told him something which Mr. Darley had that afternoon communicated to me, viz: that Mrs. White had told him that on going into the factory at about 12 o'clock noon on Saturday April 26th , she had seen some negro down by the elevator shaft. Mr. Darley had told me this and I just told this to Mr. Scott. After I told Mr. Scott all that I could, I took him around the building, took him first back to the metal room and showed him the place where the hair had been found, looked at the machinery and at the lathe, looked at the table on which the lathe stands, and the lathe bed and the floor underneath the lathe, and there wasn't a spot, much less a blood spot underneath. I showed him the other spot in front of the dressing room, and I took him to the fourth floor and showed him where I had seen White and Denham a little before one the first time and about three the second time. Then I took him down into the basement and made a thorough search of the basement, and that included an examination of the elevator well which was at the bottom of the elevator shaft, and I noticed Mr. Scott was foraging around down there and he picked up two or three or may be four articles and put them in his pocket, and one of them I specially noticed was a piece of cord exactly like that which had been found around the little girl's neck. We then (went) back and I showed him where the officer said the slipper had been found, the hat had been found and the little girl's body was located. I showed him in fact, everything that the officers had showed us. Th

I opened the back door and we made a thorough search of the alleyway and went up and down the alleyway and then went down that alleyway to Hunter Street and down Hunter to Forsyth and up Forsyth in front of the Pencil Factory. In front of the Pencil Factory I had quite a little talk with Mr. Scott as to the rate of the Pinkerton Detective Agency. He told me what they were and I had Mr. Schiff to telephone to Mr. Montag to find out if those rates were satisfactory. He phoned back the answer that he would engage them for a few days at any rate. Mr. Scott then said: "Well, I don't need anything more," and he says: "The Pinkertons in this case, according to their usual custom in ferreting out the perpetrator of this crime, will work hand in hand with the city officers." I said;"All right, that suits me." And he went on his way. About that time my father-in-law joined the group over in front of the factory add after talking for some time my father-in-law and I left and we arrived home about 6:30 I should judge, and found there my mother-in-law and my wife and Minola McKnight, and we had supper. After supper my two brothers-in-law and their wives came over to visit us and they staid until about 10 o'clock, after which my wife and I retired. On Tuesday morning I arose sometime between seven and seven-thirty, leisurely dressed and took my breakfast and caught the 8:10 car coming towards town, the Georgia Avenue car, and when I went to get on the car I met a young man by the name of Dickler and I remember paying the fare for both of us. When I arrived at the Pencil Factory about 8:30, I immedrately entered upon my routine work sending the various orders to the various places in the factory where they were due to go, and about 9:30 I went on my usual trip over to Montag Brothers to see the General Manager. After staying over there a short while I returned

company with another one of their traveling men, Mr. Jordan. At the corner of Forsyth and Hunter Street I met up with a cousin of my wife's, a Mr. Selig, and we had a drink at Cruickshank's soda fount at the corner of Hunter and Forsyth. Then I wentup into the factory and separated the papers I had brought back with me from Montag Brothers, putting them in the proper places, and sending the proper papers to the different places. I was working alongin the regular routine of my work, in the factory and about the office, and a little later detectives Scott and Black came up to the factory and said:"Mr. Frank, we want you to go down to headquarters with us," and I went with them. We went down to headquarters and I have been incarcerated ever since. We went down to headquarters in an automobile and they took me up to Chief Lanford's office. I sat up there and answered any questions that he desired, and I had been sitting there sometime when detective Scott and detective Black came back with a bundle under their arm. They showed me a little piece of material of some shirt, and asked me if I had a shirt of that material. I looked at it and told them I didn't think I ever had a shirt of that description. In the meantime they brought in Newt Lee, the night watchman, brought him up from a cell and showed him the same sample. He looked at it and immediately recognized it; he said he had a shirt like that, but he didn't remember having worn it for two years, if I remember correctly, that is what he said. Detectives Scott and Black then opened the package they had and discolsed the full shirt (State's Ex. F) of that material that had all the appearance of being freshly stained with blood, andhad a very distinct odor. Newt Lee was taken back to the cell. After a time Chief Lanford came over to me and began an examination of my face and of my head

and my hands and my arms. I suppose he was trying to hunt to see if he could find any scratches. I stayed in there until about 12 o'clock when Mr. Rosser came in and spoke to the detectives, or to Chief Beavers. After talking with Chief Beavers he came over to me and said to me that Chief Beavers thought it better that I should stay down there. He says: "He thinks it better that you be detained at headquarters, but if you desire, you don't need to be locked up in a cell, you can engage a supernumerary policeman who will guard you and give you the freedom of the building." I immediately acquiesced, supposing that I couldn't do anything else, and Mr. Rosser left. Now, after this time, it was about this time they took me from upstairs down to the District Sergeant's desk and detective Starnes--John N. Starnes, I think his name is, came in and dictated from the original notes that were found near the body, dictated to me to get a sample of my handwriting. Have you got those photographs there? (Photographs handed to the defendant). I wrote this note at the dictation of Mr. Starnes (State's Ex. K), which was given to me word by word, and of course I wrote it slowly. When a word was spelled differently they usually stopped--take this word "buy" for instance, the detective told me how that was spelled so they could see my exact letters, and compare with the original note. Now I had no hesitation in giving him a specimen of my handwriting. Now, this photograph is a reproduction of the note. You see, J. N. Starnes in the corner here, that is detective Starnes, and then is dated here, I put that there myself so I would be able to recognize it again, in case they tried any erasures or anything like that. It is a photographic of reproduction of something that was written in pencil, as near as one can judge, a photographic reproduction

of the note that I wrote. Detective Starnes then took me down to the desk sergeant where they searchedme and entered my name on the book under a charge of suspicion. Then they took me back into a small room and I sat there for awhile while my father-in-law was arranging for a supernumerary police to guard me for the night. They took me then to a room on the top of the building and I sat in the room there and either read magazines or newspapers and talked to my friends who came to see me until I was about to retire at midnight. I had the cover of my cot turned back and I was going to bed when detective Scott and detective Black, at midnight, Tuesday, April 29th, came in and said: "Mr. Frank, we would like to talk to you a little bit. Come in and talk to us." I says, "Sure , I will be only too glad to." I went with them to a little room on the top floor of the headquarters. In that room was detective Scott and detective Black and myself. They stressed the possibility of couples having been let into the factory at night by the night watchman, Newt Lee. I told them that I didn't know anything about it, that if I had, I certainly would have put a stop to it long ago. They said: "Mr. Frank, you have never talked along with Newt Lee. You are his boss and he respects you. See what you can do with him. We can't get anything more out of him, see if you can." I says: "All right, I understand what you mean; I will do my best, "because I was only too willing to help.. Black says: "Now put it strong to him, put it up strong to him, and tell him to cough up and tell all he knows. Tell him that you are here and that he is here and that he better open up and tell all he knows about happenings at the Pencil Factory that Saturday night, or you will both go to hell." Those were the detective's exact words. I told Mr. Black I caught his meaning,

and in a few minutes afterwards detectives Starnes brought up Newt Lee from the cell room. They put Newt Lee into a room and hand-cuffed him to a chair. I spoke to him at some length in there, but I couldn't get anything addional out of him. He said he knew nothing about couples coming in there at night, and remembering the instructions Mr. Black had given me I said: "Now, Newt, you are here and I am here, and you had better open up and tell all you know, and tell the truth and tell the full truth, because you will get us both into lots of trouble if you don't tell all you know," and he answered me like an old negro: "Before God, Mr. Frank, I am telling you the truth and I have told you all I know." And the conversation ended right there. Within a minute or two afterwards the detectives came back into the room, that is, detective Scott and detective Black, and then began questioning Newt Lee, and then it was that I had my first initiation into the third degree in Atlanta police department. The way that fellow Black cursed at that poor old negro, Newt Lee, was something awful. He shrieked at him, he hollosd at him he cursed and did everything but beat him. Then they took Newt Lee down to a cell and I went to my cot in the outer room.

Now before closing my statement, I wish to touch upon a couple of insinuations and accusations other than the one on the bill of indictment, that have been leveled against me so far during the trial. The first is this, the fact that I would not talk to the detectives; that I would not see Jim Conley. Well, let's look into the facts a few minutes, and see whether there was any reason for that, or if there be any truth in that statement.

establishment, to the factory, and I went to headquarters: I went to headquarters the second time, going there willingly without anybody coming for me. On each occasion I answered them frankly and unreservedly, giving them the benefit of the best of my knowledge, answering all and any of their questions, and discussing the matter generally with them. On Monday they came for me again. I went down and answered any and all of their questions and gave them a statement which they took down in writing, because I thought it was right and I was only too glad to do it. I answered them and told them all that I knew, answering all questions. Tuesday I was down at police station again, and answered every question and discussed the matter freely and openly with them, not only with the police, but with the reporters who were around there; talked to anybody who wanted to talk with me about it, and I have even talked with them at midnight when I was just about to go to bed. Midnight was the time they chose to talk to me, but even at such an outlandish hour I was still willing to help them, and at their instigation I spoke to Newt Lee alone, but what was the result? They commenced and they grilled that poor negro and put words into his mouth that I never said, and twisted not alone the English, but distorted my meaning. I just decided then and there that if that was the line of conduct they were going to pursue I would wash my hands of them. I didn't want to have anything to do with them. On the afternoon of May 1st, I was taken to the Fulton County tower. On May 3rd detectives Black and Scott came up to my cell in the tower and wanted to speak to me alone without any of my friends around. I said all right, I wanted to hear what they had to say that time. Then Black tore off something like this: "Mr. Frank, we are suspicious of that man Darley. We are watching him;

know about him." I said: "Gentlemen, you have come to the wrong man, because Mr. Darley is the soul of honor and is as true as steel. He would not do a crime like that, he couldn't do it." And Black cherped up: "Come on, Scott, nothing doing," and off they go. That showed me how much reliance could be placed in either the city detectives or our own Pinkerton detectives, and I treated such conduct with silence and it was for this reason, gentlemen, that I didn't see Conley, surrounded with a bevy of city detectives and Mr. Scott, because I knew that there would not be an action so trifling, that there was not an action so natural but that they would distort and twist it to be used against me, and that there was not a word that I could utter that they would not deform and twist and distort to be used abainstme, but I told them even then if they got the permission --I told them through my friend Mr. Klein, that if they got the permission of Mr. Rosser to come, I would speak to them, would speak to Conley and face him or anything they wanted--if they got that permission or brought Mr. Rosser. Mr. Rosser was on that day up at Tallulah Falls trying a case. Now, that is the reason, gentlemen, that I have kept my silence, not because I didn't want to, but because I didn't want to have things twisted.

Then that other implication, the one of knowing that Conley could write, and I didn't tell the authorities. Let's look into that. On May 1st I was taken to the tower. On the same date, as I understand it, the negro Conley was arrested. I didn't know anybody had any suspicions about him. His name was not in the papers. He was an unknown quantity. The police were not looking out for him; they were looking out for me. They didn't want him, and I had no inkling that he

ever said he couldn't write. I was sitting in that cellin the Fulton County jail--it was along about April 12th, April 12th or 14th--that Mr. Leo Gottheimer, a salesman for the National Pencil Company, came running over, and says, "Leo, the Pinkerton detectives have suspicions of Conley. He keeps saying he can't write; these fellows over at the factory know well enough that he can write, can't he?" I said: "Sure he can write." "We can't prove it. The nigger says he can't writeand we feel that he can write." I said, "I know he can write. I have received many notes from him asking me to loan him money. I have received too many notes from him not to know that he cannot write. In other words, I have received notes signed with his name, purporting to have been written by him, though I have never seen him to this date use a pencil." I thought awhile and then I says: "Now, I tell you; if you will look into a drawer in the safe you will find the card of a jeweler from whom Conley bought a watch on the installment. Now, perhaps if you go to that jeweler you may find some sort of a receipt that Conley had to give and be able to prove that Conley can write." Well, Gottheimer took that information back to the Pinkertons; they didjust as I said; they got the contract with Conley's name on it, got back evidently to Scott and then he told the negro to write. Gentlemen, the man who found out or paved the way to find out that Jim Conley could write is sitting right here in this chair. That is the truth about it.

Then that other insinuation, an insinuation that is dastardly that it is beyond the appreciation of a human being, that is, that my wife dind't visit me: now the truth of the matter is this, that on April 29th, the date I was taken in custody at

police headquarters, my wife was there to see me, she was downstairs on the first floor; I was up on the top floor. She was there almost in hysterics, having been brought there by her two brothers-in-law, and her father. Rabbi Marx was with me at the time. I consulted with him as to the advisability of allowing my dear wife to come up to the top floor to see me in those surroundings with city detectives, reporters and snapshotters; I thought I would save her that humiliation and that harsh sight, because I expected any day to be turned loose and be returned once more to her side at home. Gentlemen, we did all we could do to restrain her in the first days when I was down at the jail from coming on alone down to the jail, but she was perfectly willing to even ve locked up with me and share my incarceration.

Gentlemen, I know nothing whatever of the death of little Mary Phagan. I had no part in causing her death nor do I know how she came to her death after she took her money and left my office. I never even saw Conley in the factory or anywhere else on that date, April 26th, 1913.

The statement of the witness Dalton is utterly false as far as coming to my office and being introduced to me by the woman Daisy Hopkins is concerned. If Dalton was ever in the factory building with any women, I didn't know it. I never saw Dalton in my life to know him until this crime.

In reply to the statement of Miss Irene Jackson, she is wholly mistaken in supposing that I ever went to a lady's dressing for the purpose of making improper glances into the girls' room. I have no recollection of occasions of which she speaks, but I do know that that ladies' dressing room on the fourth floor is a mere room in which the girls change their outer clothing. There was no bath or toilet in that room, and it

had windows opening onto the street. There was no lock on the door, and I know I never went into that room at any hour when the girls were dressing. These girls were supposed to be at their work at 7 o'clock. Occasionally I have had reports that the girls were flirting from this dressing room through the windows with men. It is also true that sometimes the girls would loiter in this room when they ought to have been doing their work. It is possible that on some occasions I looked into this room to see if the girls were doing their duty and were not using this room as a place for loitering and for flirting. These girls were not supposed to be dressing in that room after 7 o'clock and I know that I never looked into that room at any hour when I had any reason to suppose that there were girls dressing therein.

The statement of the negro Conley is a tissue of lies from first to last. I know nothing whatever of the cause of the death of Mary Phagan and Conley's statement as to his coming up and helping me dispose of the body, or that I had antying to do with her or to do with him that day is a monstrous lie.

The story as to women coming into the factory with me for immoral purposes is a base lie and the few occasions that he claims to have seen me in indecent positions with women is a lie so vile that I have no language with which to fitly denounce it.

I have no rich relatives in Brooklyn, N.Y. My father is an invalid. My father and mother together are people of very limited means, who have barely enough upon which to live. My father is not able to work. I have no relative who has any means at all, except Mr. M. Frank who lives in Atlanta, Ga.

Nobody has raised a fund to pay the fees of my attorneys. These fees have been paid by the sacrifice in part of the small property which my parents possess.

Gentlemen, some newspaper men have called me "the silent man in the tower," and I kept my silence and my counsel advisedly, until the proper time and place. The time is now, the place is here, and I have told you the truth, the whole truth.

EVIDENCE IN REBUTTAL-FOR STATE.

J. R. FLOYD, R. M. GODDARD, A. L. GODDARD, N. J. BALLARD, HENRY CARR, J.S. RICE, LEM SMITH, all sworn for the State, testified that they knew Daisy Hopkins; that her general character for truth and veracity was bad and that they would not believe her on oath. J. R. Floyd testified that he heard Daisy Hopkins talk about Frank and said there was a cot in the basement.

J. T. HEARN, Sworn for the State.

I have known C.B. Dalton from 1890 to 1904. At first his general character was bad, but the last I knowed of him, it was good. I would believe him on oath.

CROSS EXAMINATION. I heard of his being indicted for stealing and selling liquor, but the last year he was in Walton County he joined the church and I never heard a word against him after that.

R. V. JOHNSON, Sworn for the State.

I have known C. B. Dalton for about twenty years. His character for truth and veracity is good, and I would believe him on oath.

CROSS EXAMINATION. I didn't hear he was indicted for liquor selling before he left my county. He was in good standing when he left the church. I knew he was in the chaingang for stealing about 18 or 20 years ago.

W. M. COOK, W. J. ELDER, A. B. HOUSTON, J. T. BORN, W. M. WRIGHT, C. B. McGINNIS, F.P. HEFNER, W. C. HALE, LEON BOYCE, M. G. CALDWELL, A. W. HUNT, W. C. PATRICK, all sworn for the State testified that they knew C. B. Dalton; that his general character for truth and veracity was good, and that they would believe him on oath.

MISS MYRTIE CATO, MAGGIE GRIFFIN, MRS. C. D. DONEGAN, MRS. H. R. JOHNSON, MISS MARIE CARST, MISS NELLIE PETTIS, MARY DAVIS, MRS. MARY E. WALLACE, ESTELLE WINKLE, CARRIE SMITH?all sworn for the defendant, testified that they were formerly employed at the National Pencil Company and worked at the factory for a period varying from three days to three and a half years; that Leo M. Frank's character for lasciviousness was bad.

MISS MAMIE KITCHENS, Sworn for the State in rebuttal.

I have worked at the National Pencil Company two years. I am on the fourth floor. I have not been called by the defense ~~xxx testifyx~~ Miss jones and Miss Howard have also not been called by the defense to testify. I was in the dressing room with Miss Irene Jackson when she was undressed, Mr. Frank opened the door, stuck his head inside. He did not knock. He just stood there and laughed. Miss Jackson said "Well, we are dressing, blame it", and then he shut the door.

CROSS EXAMINATION. Yes, he asked us if we didn't have any work to do. It was during business hours. We didn't have any work to do. We were going to leave. I Have never met Mr. Frank anywhere, or any time for any immoral purposes.

MISS RUTH ROBINSON, sworn for the State in rebuttal.

I have seen Leo M. Frank talking to Mary Phagan. He was talking to her about her work, not very often. He would just tell her, while she was at work, about her work. He would stand just close enough to her to tell her about her work. He would show her how to put rubbers in the pencils. He would just take up the pencil and show her how to do it. That's all I saw him do. I heard him speak to her, he called her Mary. That was last summe r

MISS DEWEY HEWELL, SWorn for the State in rebuttal.

I stay in the Home of the Good Shepherd in Cincinnati. I worked at the Pencil Factory four months. I quit in March 1913. I have seen Mr.Frank talk to Mary Phagan two or three times a day in the metal department. I have seen him hold his hand on her shoulder. He called her Mary. He would stand pretty close to her. He would lean over in her face.

CROSS EXAMINATION . All the rest of the girls were there when he talked to her. I don't know what he was talking to her about.

MISS REBECCA CARSON, Recalled by [redacted] for the State in rebuttal.

I have never gone into the dressing room on the fourth floor with Leo M. Frank.

MISS MYRTLE CATO, MISS MAGGIE GRIFFIN , both sworn for the State, testified that they had seen Miss Rebecca Carson go into the ladies dressing room on the fourth floor with Leo.M. Frank two or three times during working hours; that there were other ladies working on the fourth floor at the time this happened

J. E. DUFFY, Sworn for the State, in rebuttal.

I worked at the National Pencil Company. I was hurt there in the metal department. I was cut on my forefingers on the left hand. That is the cut right around there (indicating). It never cut off any of my fingers I went to the office to have it dressed It was bleeding pretty freely. A few drops of blood dropped on the floor at the machine where I was hurt. The blood did not drop anywhere else except at that machine. None of it dropped near the ladies dressing room, or the water cooler. I had a large piece of cotton wrapped around my finger. When I was first cut I just slapped a piece of cotton waste on my hand.

CROSS EXAMINATION. I never saw any blood anywhere except at the machine. I went from the office to the Atlanta Hospital to have my finger attended to.

W. E. TURNER, Sworn for the State in rebuttal.

I worked at the National Pencil Company during March of this year. I saw Leo Frank talking to Mary Phagan on the second floor, about the middle of March. It was just before dinner. There was nobody else in the room then. She was going to work and he stopped to talk to her. She told him she had to go to work. He told her that he was the superintendent of the factory, and that he wanted to talk to her, and she said she had to go to work. She backed off and he went on towards her talking to her. The last thing I heard him say was he wanted to talk to her. That is all I saw or heard.

CROSS EXAMINATION. That was just before dinner. The girls were up there getting ready for dinner. Mary was going in the direction where she worked, and Mr. Frank was going the other way.. I don't know whether any of the girls were still at work or not. I didn't look for them. Some of the girls came in there while this was going on and told me where to put the pencils. Lemmie Quinn's office is right there. I don't know whether the girls saw him talking to Mary or not, they were in there. It was just before the whistles blew at noon. Mr. Frank told her he wanted to speak to her and she said she had to go to work, and the girls came in there while this conversation was going on. I can't describe Mary Phagan. I don't know any of the other little girls in there. I don't remember who called her Mary Phagan, a young man on the fourth floor told me her name was Mary Phagan. I don't know who he was. I didnt know anybody in the factory. I can't describe any of the girls. I don't know a single one in the factory.

W. P. MERK, Sworn for the State in rebuttal.

I have been a motorman for about three years, in the employ of the Georgia Railway & Electric Company. I know Daisy Hopkins. I have met her at the corner of Whitehall and Alabama St. between 2:30 and 3:30 on a Saturday. She said she was going to penal factory I made an engagement with her to go to her room to see her that Saturday. I was in a room with her at the corner of Walker and Peter St about 8:30 o'clock. She told me she had been to the pencil factory that afternoon. Her general

[illegible] and veracity is bad. I would not believe her

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on oath.

GEORGE GORDON, Sworh for the State, in rebuttal.

I am a practicing lawyer. I was at police station part of the time when Minola McKnight was making her statement. I was outside of the door most of the time. I went down there with habeas corpus proceedings to have her sign the affidavit and when I got there the detectives informed me that she was in the room, and I sat down and waited outside for her two hours, and people went and out of the door, and after I had waited there I saw the stenographer of the Recorder's court going into the room and I decided I had better make a demand to go into the room, which I did, and I was then allowed to go into the room and I found Mr February reading over to her some stenographic statement he had taken. There were two other men from Beck & Gregg Hardware store and Pat Campbell and Mr. Starnes, and Albert McKnight. After that was read Mr. February went out to write it off on the typewriter and while he was out Mr.Starnes said, "Now this must be kept very quietand nobody be told anything about this". I thought it was agreed that we would say nothing about it. I was surprised when I saw it in the newspapers two or three days afterwards. I said to Starnes "There is nor reason why you should hold this woman, you ahould let her go." He said he would do nothing without consulting Mr. Dorsey and he suggested that I had better go to Mr.Dorsey's office. I went to his office and he called up Mr.Starnes and then I went back to the police station and told Starnes to call Mr.Dorsey and I presume that Mr.Dorsey told him to let her go. Anyway she said she could go. You (Mr.Dorsey) said you would let her go also. That morning you had said you would not unless I took out a habeas corpus. In the morning after Chief Beavers told me he would not let her go on bond and unless you (Mr.Dorsey) would let her go. I went to your office and told you that she was being held illegally and you admitted it to me and I said we would give bond in any sum that you might ask. You said you would not let her go because you would get in bad with the detectives, and you advised me to take

out a habeas corpus, which I did. The detectives said they couldn't let her go without your consent. You said you didn't have anything to do with locking her up. As to whether Minola McKnight did not sign this paper freely and voluntarily(State's exhibit J), it was signed in my absence while I was at police station. When I came back this paper was lying on the table signed. That paper is substantially the notes that Mr.February read over to her. As they read it over to her, she said it was about that way, Yes, you agreed with me that you had no right to lock her up. I don't know that you said that you didn't do it. I don't remember that we discussed that. You told me that you would bot direct her to be let loose, because you would get in bad with the detectives. I had told you that the detectives told me they would not release her unless you said so. I took out a habeas corpus immediately afterwards and went down there to get her released, and she was released.

CROSS EXAMINATION. I heard that they had had her in Mr.Dorsey's office and she went away screaming and was locked up. I knew that Mr.Dorsey was letting this be done. She was locked in a cell at the police station when I saw her. They admitted that they did not have any warrant for her arrest. Beavers said he would not let her out on bond unless Mr.Dorsey said so. He said the charge against her was suspicion. They put her in a cell and kept her until four o'clock the next day before they let her go. When I went down to see her in the cell, she was crying and going on and almost hysterical. When I asked Mr.Dorsey to let her go out on bond, he said he wouldn't do it because he would get in bad with the detectives, but that if I would let her stay down there with Starnes and Campbell for a day, he would let her loose without any bond, and I said I wouldn't do it. I said that I considered it a very reprehensible thing to lock up somebody because they knew something and he said, "Well, it is sometimes necessary to get information," and I said "Certainly, our liberty is more necessary than any information, and I consider it a trampling on

. our Anglo Saxon liberities".They did not tell me that they already had a statement that she had made, and which she declared to be the truth.

REDIRECT EXAMINATION. You (Mr.Dorsey(did not tell me that you had no right to lock anybody up. I told you that, and you agreed to it, but you would not let her go. I told you that Chief Beavers said he would do what you said and then I asked you to give me an order. You sad you wouldn't give me an order. When I told Starnes that I thought I ought to be in that room while Minola was making the statement, he knocked on the door, and it was unlocked on the inside and they let me in. They let me into the room at once after I had been sitting there two hours. I was present ~~when she made the statement~~ about the payment of the cook I don't remember what questions I asked her at that time. I was her attorney, I didn't go down there to examine her; I went there to get her out. Starnes and Campbell were in and out of the room during the time. Mr.Starnes stayed on the outside of the door part of the time. I don't know who was in the room and who was nt not while I was outside.

ALBERT McKNIGHT, Sworn for the State in rebuttal.

This sideboard (defendant's exhibit ~~56~~ 57) sets more this way than it was at the time I was there.

CROSS EXAMINATION . I don't know if the sideboard was changed, but it wansn't setting like that is in the corner. I didn't see the sideboard at all, but I don't like the angle of this plat.

R. L. CRAVEN, Sworn for the State in rebuttal.

I am connected with the Beck & Gregg Hdw. Co. Albert McKnight also works for the same company. He asked me to go down and see if I could get Minola McKnight out when she was arrested. I went there for that purpose. I was present when she signed that affidavit (State's exhibit J). I went out with Mr.Pickett to Minola McKnight's home the latter part of May. Albert McKnight was there. On the 3rd Day of June, we were down at the station house and they brought Minola McKnight in and we questioned her first as to the statements Albert had given me; at first she

would not talk, she said she didn't know anything about it. I told het that Albert made the statement that he was there Saturday when Mr.Frank came home, and he said Mr.Frank came in the dining room and stayed about ten minutes and went to the sideboard and caught a car in about ten minutes after he first arrived there, and I went on and told her that Albert had said that Minola had overheard Mrs.Frank tell Mrs. Selig that Mr.Frank didn't rest well and he came home drinking and made Mrs. Frank get out of bed and sleep on a rug by the side of the bed and wanted her to give him his pistol to shoot his head off and that he had murdered somebody, or something like that. Minola at first hesitated, but finally she told everything that was in that affidavit. When she did thatMr.Starnes, Mr; Campbell, Mr. February, Albert McKnight, Mr. Pickett, and Mr. Gordon were there. When we were questioning her,I don't remember whether anybody but Mr. Pickett and myself and Albert McKnight were there.

CROSS EXAMINATION . We went down there about 11:30 o'clock. I didn't know that she had been in jail twelve hours then. I suppose she was in jail because they needed her as a witness. I was in Mr.Dorsey's office only one time about this matter, the same moring I started out to see if I could get her and I went to see Mr.Dorsey about getting her out. Her husband wanted her out of jail and I went to see Mr.Dorsey about getting her out. at first she denied it. I questioned her for something like two hours. I didn't know she had already made a statement about the truth of the transaction. Mr.Dorsey didn't read it to me. He said she was hysterical and wouldn't talk at all. I went down to get her to make some kind of a statement, I wanted her to tell the truth in the matter. I wanted to see whether her husband was telling the truth or whether she was telling a falsehood. Yes, she finnally m made a statement that agreed with her husband, and I left after awhile. As to why I didn't stay and get out, because I didn't want to.I went after we got her statement. No, I didn't get her out of jail. I did not look after her any further than that. I don't think Mr.Dorsey told me to question her. He wanted me to go

out to see her, he said Mr. Starnes and Mr. Campbell would be up there and they would let us know about it, and we went up there and Mr. Starnes and Mr. Campbell brought her in. They let us see her allright. I did not ask Campbell or Starnes to turn her out. I didn't ask anybody to turn her out. I never made any suggestion to anybody about turning her out. Nobody cursed, mistreated or threatened this woman while I was there. I don't know what took place before I got there.

E. H. PICKETT , Sworn for the State in rebuttal.

I work at Buck & Gregg Hdw. Co. I was present when that paper was signed (State's exhibit J) by Minola McKnight. Albert McKnight, Starnes, Campbell, Mr. Craven, Mr. Gordon was present when she made that statement.. We questioned her about the statement Albert had made and she denied it all at first. She said she had been cautioned not to talk about this affair by Mrs. Frank or Mrs. Selig. She stated that Albert had lied in what he had told us. She finally began to weaken on one or two points and admitted that she had been paid a little more money than was ordinarily due her. There was a good many things in that statement that she did not tell us though. She didn't tell us all of that when she went at it. She seemed hysterical at the beginning. We told her that we weren't there to get her into trouble, but came down there to get her out, and then she agreed to talk to us but would not talk to the detectives. The detectives then retired from the room. Albert told her that she knew she told him those things. She denied it, but finally acknowledged that she said a few of those things, and among the things I remember is that she was cautioned not to repeat anything she heard. We asked her a thousand questions perhaps, I don't know how many. I called the detectives and told them we had gotten all the admissions we could. We didn't have have any stenographer and Mr. Craven began writing it out, and Mr Craven had written only a small portion when the stenographer came She did not make all of that statement in the first talk she had with us. She didn't say anything with reference to Mrs. Frank

having stated anything to her mother on Sunday morning. The affidavit does not contain anything that she did not state there that day. Before she made that affidavit, she said he did eat dinner that day. She finally said he didn't eat any. At first she said he remained at home at dinner time about half an hour or more She finally said he only remained about ten minutes. At first she said Albert McKnight was not there that day. She finally said he was there. She said she was instructed not to talk at first. At first she said her wages hadn't been changed, finally said her wages had been raised, by the Seligs. As to what, if anything, she said about a hat being given her by Mrs. Selig, the only statement she made about the hat at all was when she made the affidavit. We didn't know anything about the hat before. Nobody threatened her when she was there. When the first questioning was going on Campbell and Starnes were not in there. They came in when we called them and told them we were ready. Her attorney, Mr. Gordon, came in with the detectives.

CROSS EXAMINATION. As to why we didn't take her statement when she denied saying all those things, because we didn't believe them. We were down there about three hours. We went down there to try and get Minola McKnight out, if we could. We asked Mr.Dorsey to get her out. He said he would let us stand her bond, and he referred us to the detectives to make arrangements. As to why we didn't get her out then, we wanted a statement from her if we could get it. No, I didn't know that whenever the detectives got the story they wanted, they would let her out. As to my going to get her out and then grilling her for three hours, I didn't tell her I was going to get her out, I went down there to get her out, but she left there before I did. She went out of the room. The detectives treated her very nice. They let her go after she made the statement. I knew they were holding her because she did not make a statement confirming her husband. It was not my object to make her statement agree with her husband's statement, but it was my duty as a goo citizen to make her tell the truth.

Dr.S.C.BENEDICT, Sworn for the State in rebuttal.

I am president of the State Board of Health as a member of the Board when Dr.Westmoreland preferred charges against Dr.Harris. [redacted]ose minutes (State's Exhibit N) are correct. I desire to say that we do not wish to open up that question again Dr.Westmoreland's charges are not recorded here. I don't think they were put on the minutes. The reply to the charges were put in the minutes and the action of the Board. The minutes would show what action the Board took.

CROSS EXAMINATION. Dr. Harris reply is not entered on the minutes. The reply of the Board to the charges is on the minutes.

J. H. HENDRICKS, Sworn for the State in rubuttal.

I am a motorman for the Georgia Railway & Electric Company. On April 26, I was running a street car on the Marietta line to the Stock Yards on Decatur St. I couldn't say what time we got to town on April 26, about noon. I have no cause to remember that day. The English Avenue car, with Matthews and Hollis has gotten to town prior to April 26, ahead of time. I couldn't say how much ahead of time. I have seen them come in two or three minutes ahead of time. that day they came about 12.06. Hollis would usually leave Broad & Marietta St. on my car. I Couldn't swear postively what time I got to Broad & Marietta St. on April 26. I couldn't swear what time Hollis and Matthews got there that day. I don't know anything about that. Often they get there ahead of time, some times they are punished for it.

J.C.MCEWING, Sworn for the State in rebuttal.

I am a street car motorman. I ran on Marietta and Decatur St. April 26. My car was due in town at ten minutes after the hour on April 26. Hollis and Matthews car was due there 7 minutes after the hour. Hendricks cars was due there 5 minutes after the hour. The English Avenue frequently cut off the White City car due in town at 12.05. The White City car is due there before the English Avenue.

It is due 5 minutes after the hour and the Cooper St. id due 7 minutes after. The English Avenue would have to be ahead of time to cut off the Cooper St. car. That happens quite often. I have come in ahead of time very often. I have known the English Avenue car to be 4 or 5 minutes ahead of time.

CROSS EXAMINATION. I don't know when that happened or who ran the car. I don't know whether they ran on schedule time on April 26, or not. When one car id cut off, one might be ahead of time, add one might be behind time. Its reasonable to suppose that the five minutes after car ought to come in ahead of the one due seven minutes after. If it was behind it would be cut off, just as easy as the other one would be cut off by bein ahead.

M.E.McCOY, Sworn for the State, in rebuttal.

I knew Mary Phagan. I saw her on April 26, in front of Cooledge's place at 13 Forsyth St. She was going towards ~~Alabama St~~ pencil company, South on Forsyth St, on right hand side. It was near twelve o'clock. I left the corner of Walton & Forsyth St. exactly twelve o'clock and came straight on down there. It took me three or four minutes to go there.

CROSS EXAMINATION. I know what time it was because I looked at my watch. First time I told it was a week ago last Saturday, when I told an officer. I didn't tell it because I didn't want to have anything to do with it. I didn't consider it as a matter of importance, until I saw the statement of the motorman of the car she came in on, and I knew that was wrong. She was dressed in blue, a low chunky girl. Her hair was not very dark. She had on a blue hat.

GEORGE KEMDLEY, Sworn for the State in rebuttal.

I am with the Georgia Railway & Power Co. I saw Mary Phagan about noon on April 26. She was going to the pencil factory from Marietta St. When I saw her she stepped off of the viaduct.

CROSS EXAMINATION. I was on the front end of the Hapeville car when I saw her. It is due in town at 12 o'clock. I don't know if it was on time that day. I told several people about seeing her the

next day. If Mary Phagan left home at 10 minutes to 12, she ought to have got to town about 10 minutes after 12, somewhere in that neighborhood. She could not have gotten in much earlier. The time that I saw her is simply an estimate. That was the time my car was due in town. I remember seeing her by reading of the tragedy the next day. I didn't testify at the Coroners inquest, because nobody came to ask me. No, I have not abused and villified Frank since this tragedy. No, I have not made myself a nuisance on the cars by talking of him. I know Mr. Brent. I didn't tell him that Mr. Frank's children said he was guilty. Mr. Brent asked me what I thought about it several times on the car. He has always been the aggressor. As to whether I abused and villified him in the presence of Miss Haas and other passengers, there has been so much talk that I don't know what has been said. I don't think I said that if he was released I would join a party to lynch him. Somebody said if he got out there might be some trouble. I don't remember saying that I would join a party to help lynch him if he got out. I talk- to Mr. Leach about it. I don't remember what I told him. I told him I saw her over there about 12 o'clock. That was the time the car was due in town. I know I saw her before 12.05 . My car was on schedule time. I couldn't swear it was exactly on the minute.

HENRY HOFFMAN, Sworn for the State in rebuttal.

I am inspector of the Street car company. Matthews is under me a certain part of the day. On April 26, he was under me from 11.30 to 12.07. His car was due at Broad. and Marietta at 12.07. There is no such schedule as 12.07 1/2. I have been on his car when he cut off the Fair St. car. Fair Street car is due at 12.05. I have compared watches with him. Tey vary from 20 to 40 seconds. We are supposed to carry the right time. I have called Matthews attention to running ahead of schedule one or twice. They come in ahead of time on relief time for supper and dinner.

CROSS EXAMINATION. I don't know anything about his coming on April 26th. We found out he was ahead of time way along last March . He

a minute and a half ahead. I have caught him as much as three minutes ahead of time last Spring, on the trip due in town 12.07. I didn't report him, I just talked to him. I have known him to be ahead of time twice in five years while he was under my supervision.

N. KELLY, Sworn for the State in rebuttal.

I am a motorman of the Georgia Railway & Power Co. On April 26, I was standing at the corner of Forsyth and Marietta St. about three minutes after 12. I was going to catch the College Park car home about 12.10. I saw the English Avenue car of Matthews and Mr. Hollis arrive at Forsyth and Marietta about 12.03. I knew Mary Phagan. She was not on that car . She might have gotten off there, but she didn't come around. I got on that car at Broad and Marietta and went around Hunter St. She was not on there.

CROSS EXAMINATION. I didn't say anything about this because I didn't want to get mixed up in it. I told Mr. Starnes about it this mroning. I have never said anything about it before. That car was due in town at 12.07. The Fair St.car was behind it.

W.B.OWENS, Sworn for the State in rebuttal.

I rode on the White City line of the Georgia Railway & Electric Co. It is due at 12.05. Two minutes ahead of the English Avenue car. We got to town on April 26, at 12.05. I don't remember seeing the English Avenue car that day. I have known that car to come in minute ahead of us, some times two minutes ahead. That was after April 26. I don't recall whether it occured before April 26.

LOUIS INGRAM, Sworn for the State in rebuttal.

I am a conductor on the English Avenue line. I came to town on that car on April 26. I don't know what time we came to town. I have seen that car come in ahead a time several times, sometimes as much as four minutes ahead. I know Matthews, the motorman. I have ridden in with him when he was ahead of time several times.

CROSS EXAMINATION. It is against the rules to come in ahead of time, and also coming in ahead of time. They punish you for either one.

W. M. MATTHEWS, Sworn for the State in rebuttal.

I have talked with this man Dobbs (W.C.) but I don't know what I talked about. I have never told him or any body that I saw Mary Phagan get off the car with George Epps at the corner of Marietta and Broad. It has been two years since I have been tried for an offence in this court.

CROSS EXAMINATION. I was acquitted by the jury. I had to kill a man on my car who assaulted me.

W.C.DOBBS. Sworn for the State in rebuttal.

Motorman Matthews told me two or three days after the murder, that Mary Phagan and George Epps got on his car together and left at Marietta and Broad st.

CROSS EXAMINATION. Sergeant Dobbs is my father.

W. W. ROGERS, Sworn for the State in rebuttal.

On Sunday morning after the murder, I tried to go up the stairs leading from the basement up to the next floor. The door was fastened down. The staircase was very dusty, like it had been some little time since it had been swept. There was a little mound of shavings right where the chute came down on the basement floor. The bin was about a foot and a half from the chute.

SERGEANT L.S. DOBBS, Sworn for the State in rebuttal.

I saw Mr. Rogers on Sunday try to get in that back door. There were cobwebs and dust there. The door was closed leading up from basement in rear of factory

O. TILLANDER, Sworn for the State in rebuttal.

Mr. Graham and I went to the pencil factory on April 26, about 20 minutes to 12. We went in from the street and looked around and I found a negro coming from a dark alley way, and I asked him for the office and he told me to go to the second floor and turn to the right. I saw Conley this morning. I am not postive that he is the man. He looked to be about the same size. When I went to the office, the stenographer was in the outer office. Mr. Frank was in the inner office sitting at his desk. I went there to get my stepsons money.

EKK.GRAHAM,Sworn for the State in rebuttal.

I was at the pencil factory April 26,with Mr. Tillander, about 30 minutes to 12. We met a negro on the ground floor. Mr. Tillander asked him where the office was, and he told him to go up the steps. I don,t know whether it was Jim Conley or not. He was about the same size, but he was a little brighter than Conley. If he was drunk I couldn't notice it. I wouldn't have noticed it anyway.

CROSS EXAMINATION. Mr. Frank and his stenographer were up stairs. He was at his desk. I didn't see any lady when I came out.

J. W. COLEMAN,Sworn for the State in rebuttal.

I remember a concersation I had with detective McWorth. He exhibited an envelope to me with a figure "5" on the right of it.

CROSS EXAMINATION. This does not seem to be the envelope he showed me.(Defendant's exhibit 51) The figure "5" was on it. I don't see it now. I told him at the time that Mary was due $ 1.30, and that "5" on the right would not suit for that.

J.M.GANTT,Sworn for the State for rebuttal.

I have seen Leo Frank make up the financial sheet. It would take him an hour and a half after I gave him the data.

IVY JONES,(c) Sworn for the State in rebuttal.

I saw Jim Conley at the corner of Hunter and Forsyth St. on April 26. He came in the saloon while I was there,between one and two o'clock. He was not drunk when I saw him. The saloon is on the opposite corner from the factory. We went on towards Conley's home. I left him at the corner of Hunter and Davis St. a little after two o'clock.

HARRY SCOTT,Sworn for the State in rebuttal.

I picked up cord in the basement when I went through there with Mr.Frank . Lee's shirt had no odor on it,excepting that of blood. I got the information as to Conley's being able to write from McWorth when I returned to Atlanta. As to the conversation Black and I had, with Mr.Frank about Darley,Mr.Frank said Darley

was the soul of honor and that we had the wrong man; that there was no use in inquiring about Darley and he knew Darley could not be responsible for such an act. I told him that we had good information to the effect that Darley had been associating with other girls in the factory; that he was amarried man and had a family. Mr. Frank didn't seem to know anything about that. He said it was a peculiar thing for man in Mr. Darley's position to be associating with factory employees, if he was doing it.

CROSS EXAMINATION. We left after about two hours interview.

L. T. KENDRICK, Sworn for the State in rebuttal.

I was night watchman at the pencil factory for something like two years. I Punched the clocks for a whole nights work in two or three minutes. The clock at the factory needed setting about every 24 hours. It varied from three to five minutes. That is the clock slip I punched, (State Exhhbit P). I don't think you could have heard the elevator on the top floor if the machinery was running or any one was knocking on any of the floors. The back stairway was very dusty and showed that they had not been used lately after the murder. I have seen Jim Conley at the factory Saturday afternoons when I went there to get my money.

CROSS EXAMINATION. I generally got to the factory about a quarter to two to 2.30. The clock was usually corrected every morning. The clock would run slow sometimes and sometimes fast.

VERA EPPS, Sworn for the State in rebuttal.

My brother George was in the house when Mr. Minar was asking us about the last time we saw Mary Phagan. I don't know if he heard the questions asked. George didn't tell him that he didn't see Mary that Saturday. I told him I had seen Mary Phagan Thursady.

C. J. MAYNARD, Sworn for the State in rebuttal.

I have seen BURTUS DALTON go in the factory with a woman in June or July 1913. She weighed about 125 pounds. It was between 1.30 and 2 O'clock in the afternoon on a Saturday.

CROSSEXAMINATION. I was ten feet from the woman. I didn't notice her very particularly. I did not speak to them.

W. T. HOLLIS, Sworn for the State in rebuttal.

Mr Reed rides out with me every morning.

I don't remember talking to J. D. Reed on ~~XXXXX~~ Monday April 29, and telling him that George Epps was Mary Phagan on my car together. I didn't tell that to anybody. I say like I have always said, that if he was on the car I did not see him.

J. D. REED, Sworn for the State for rebuttal.

Mr. Hollis told me on Monday April 28, that Epps had gotten on the car and taken his seat next to Mary and that the two talked to each other all the way as though thay were little sweethearts.

J. N. STARNES, Sworn for the State ~~in Rebuttal.~~

These were no spots around the scuttle hole where the ladder is immediately after the murder. Campbell and I arrested Minola McKnight, to get a statement from her. We turned her over to the patrol wagon and we never saw her any more until the following day, when we called Mr. Craven and Mr. Pickett to come down and interview her. ~~We satyed on the outside while she was on the inside with~~ Craven and Pickett. ~~They called us back and I said to her," Minola~~ the truth is all we want", and if this is not the truth dont you state it. And she atarted to put the statement down. Mr. Gordon her attorney, was on the outside, and I told him he could go inside without his making any demand on me, and he went in with me, and Mr February had already taken down part of the statement and I stopped him and made himread over what he had already taken down, and after she had finished the statement, Attorney Gordon went to Mr. Dorsey's office and then he came back to the police station. After he returned the affidavit was read over in the presence of Mr. Pickett, Craven, Campbell, Albert McKnight, and Attorney Gordon and she signed it in our presence. You (Mr. Dorsey) had nothing to do with holding her. You told me over the phone that you couldn't say what I could do, but that I could do what I pleased about it.

CROSS EXAMINATION. No, I did not look her up because she didn't give us the right kind of statement. as to the authority I had to

look her up, it was reasonable and right that she should be looked up. I did that for the best interest of the case I was working on. No, I didn't have any warrant for her arrest. She was brought to Mr. Dorsey's office by a baliff by a suppoena. I took her away from Dorsey's office and put her in a patrol wagon. I expect Mr. Dorsey knew we were going to look her up, but he did not tell us todo it. No, he didn't disapprove of it. I didn't know anything about her having made a previous statement to Mr.Dorsey. I think Mr. Dorsey said she had made such a statement. I saw her the next day in the station house. She didn't scream after leaving Dorsey's office until she reached the side walk. And then she commenced hollering and carrying on that she was going to jail; that she didn't know anything ~~about it~~, or something like that. No, I had no warrant for her arrest. She had committed no crime. I held her to get the truth. Mr. Dorsey told me I could turn her a loose as I pleased. That was after she made the statement. I told him as to what had occured and that her attorney Gordon was coming up there to see him. I told Col. Gordon that if it was agreeable with Col.Dorsey that Minola could go so far as we are ~~concerned. Well,~~ Mr. Dorsey had more or less to do with the case that I was working on and I wanted to act on his advise and consent. He called me on the telephone andtold that if the Chief thought it best or if we thought it best after conferring to just let her go.

DR. CLARENCE JOHNSON, Sworn for the State in rebuttal.

I am a specialist on diseases of the stomach and intestines. I am physiologist. A physiologist makes his searches on the living body; the pathologist makes his on a dead body. If you give any one who has drunk a chocolate milks at about eight o'clock in the morning, cabbage at twelve o'clock and thirty or forty minutes thereafter, you take the cabbage out and it is shown to be dark like chocolate and milk, that much contents of any kind vomited up three and a half hours afterwards would show an abnormal stomach. It dosen't show a normal digestion. If a little girl who eats a dinner of cabbage and bread at 11.30 is found the next morning

dead at 3 A.M. with a rope around her neck indented and the flesh sticking up, bruised on the eye, blood on the back of her head, the tongue sticking out, blue skin, every indication that she came to her death from strangulation, her head down, rigor mortis had been on her twenty hours, the blood had settled in her where the gravity would naturally take it in the face, she is embalmed, formaldehyde is used and injected in the various cavities of the body, including the stomach, a pathologist takes her stomach a week or ten days after, finds cabbage of that size (States Exhibit G) in the stomach, finds starch granules undigested, and finds in the stomach that the pyloris is still closed that there is nothing in the first six feet of the small intestines; that there is every indication that digestion had been progressing favorably, and finds thirty two degrees hydrochloric acid and if the pathologist is capable and finds that there was only combined hydrochloric acid and that there was no abnormal mechanical condition of the stomach of the six feet of the intestines was empty I would say that the digestion of bread and cabbage was stopped within an hour after they were eaten. That would not be a wild guess in my opinion.

CROSS EXAMINATION. The bruises on the head, the evidences of strangulation and other injuries about the head are other possible factors which must be taken into consideration. Anything which disturbes the circulation of the blood, or hinders tha action of the nerves controlling the stomach, especially the secretion, prevents the developement of the characteristics found in normal digestion one hour after a meal. I mean by mechanical condition of the stomach, no change in the size or thickness, or opening into the intestines, or size, or thickness of intestines. The test should be made with absolute accuracy with these acids. The color test is generally accepted. A mans eye has to be absolutely correct to make the color test. The degree of acidity in a normal stomach varies from 30 to 45 degrees, according to the stomach and what is in it. The formaldehyde would make no change on the physical property on the pancreatic juice found in the small intestine after death. There would be

hardly any change on its chemical property. When it comes in contact with the formaldehyde it is supposed to be preserved. It has some neutralizing effect on the alkali present. That decomposes in time after death, unless hindered by some preservative. The hydrochloric acids in the stomach also disappears if the stomach has disentergrated and the persative has disappeared. It disappears like the other fluids and tissues of the body unless hindered by some preservative agent. Sometimes digestion is delayed a good deal even in a normal stomach by indufficent mastication, too much diluting of the juices, or anything that hinders the operation of the mechanical effect. Insufficient mastication id one of the commenst causes, also the taking of too much liquid. Fatigue occasioned by extensive walking would hinder it. If the walking was not too extensive to produce fatigue, it would help digestion in a normal stomach? Insufficent mastication is the worst cause of delayed digestion. My estimate was that the cabbage was found an hour after the process of digestion had begun. I did not undertake to say when the digestion began. You can't tell by looking at food in a bottle how much the failure to masticate it delayed digestion in hours and minutes. It would be just an estimate. The physical appearance of that cabbage (Defendabt's Exhibit 88) shows indigestion, by the layer, character and size, and area of separation between, and the character and arrangement of the layers below. The mere fact that it was vomited up would be proof postive that no scientific opinion could made about it. To make a scientific test, I would have to test the mechanism of the stomach, the time it was in there and the degree and presence of the different acids. The chocolate milk would not naturally stay in a normal stomach five or six hours? The cabbage would stay in a normal empty stomach where there was a tomato also three or four hours. I never made any test of Mary Phagan's stomach and examined the contents of it.

REDIRECT EXAMINATION. 160 cubic cc of liquid in the stomach taken out nine days afterwards would be a little in excess of what I would consider normal under the conditions already named.

Dr. GEO M. NILES, Sworn for the State in rebuttal.

I confine my work to diseases of digestion. Every heathy stomach has a certain definate and orderly relation to every other healthy stomach. Assumimg a young lady between thirteen and fourteen years of age at 11.30 April 26, 1913, eats a meal of cabbage and bread, that the next morning about three o'clock her dead body is found. That there are indentations in her neck where a cord had been around her throat, indicating that she died of strangulation, her nails blue, her face blue, a slight injury on the back of the head, a contused bruised on one of her eyes, the body is found with the face down, rigor mortis had been on from sixteen to twenty hours, that the blood in the body has settled in the part where gravity would naturally carry it, that the body is embalmed immediately with a fluid consisting chiefly of formaldehyde, which is injected in the veins and cavities of the body, that she is disinterred nine days thereafter; that cabbage of this texture, (State's Exhibit G) is found in her stomach that the position of the stomach is normal, that no inflamation of the stomach is found by microscopic investigation, that no mucous is found, and that the glands found under this microscope are found to be normal , that there is no obstruction to the flow of the contents of the stomach to the small intestine, that the pyloris is closed, that there is every indication that digestion was progressing favorably, that in the gastric juices, there id found starch granules that are shown by the color test to have been undigested, and that in that stomach you also find thirty two degrees of hydrocholoric acid, no maltose, no dextrin , no free hydrochlorsc acid - there would be more or less free hydrocholoric acid in the course of an hour or more in the orderly progress of digestion of a healthy stomach, where the contents are carbohydrates. I would say that indicated that digestion had been progressing less than an hour.

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The starch digestion should have progressed beyond the state erythrogextrin; in the course of an hour. There should have been enough free acid to have stimulated the pyloris to relax to a certain extent, and there should have been some contents in the duodanum. I am assuming of course that it is a healthy stomach and that the digestion was not disturbed by any psychic cause which would disturbe the mind or any severe physical exercise. I am not going so much by the physical appearance of the cabbage. Any severe physical exercise or mental stress has quite an influence on the digestion. Death does not change the composition of the gastric juices when combined with hydrochloric acid for quite a while. The gastric juices combine with the hydrocholoric acid are an antiseptic or preservative. There is a wide variation in diseased stomachs as to digestion.

GROSS EXAMINATION. There are idiosyncracies in a normal stomach, but where they are too marked I would not consider that a normal stomach. I wouldn't say that there is a mechanical rule where you can measure the digestive power of every stomach for every kind of food. There is a set time for every stomach to digest every kind of food within fairly regular limits, that is a healthy stomach. There is a fairly fixed standard. There is no great amount of variation between healthy stomachs . I can't answer for how long it takes cabbage to digest. I have taken cabbage out of cancerous stomach that had been in there twenty four hours, but there was no obstruction. The longest time that I have taken cabbage out of a fairly normal stomach was between four and five hours. That was where it was in the stomach along with another meal. I found the cabbage among the remains of the meal four or five hours after it had been eaten. Mastication is a very important function of digestion. Failure to masticate delays the starch digestion. Starch and cabbage are both carohydrates. I would say that if cabbage went into a healthy stomach not well masticated, the starch digestion would not get on so well, but the stomach would get

WRINKLE in PAGE

busy at once. Of course, it would not be prepared as well. The digestion would be delayed of course. That cabbage is not as well digested as it should have been (State's exhibit G), but the very fact of your anticipating a good meal, smelling it, starts your saliva going and forms the first stage of digestion, and digestion is begun right there in the mouth, even if you haven't chewed it a single time. Any deviasion from good mastication retards digestion. I couldn't presume to say how long that cabbage lay in Mary Phagan's stomach. I believe if it had been a live, healthy stomach and in the process of digestion was going on orderly, it would be pulverized in four or five hours. I would be more broken up and tricturated than it is. I wouldn't consider that a wild guess. I think it would have been fairly well pulverized in three hours. Chewing amounts to a great deal, but there should be an amount of saliva in her stomach even if she hadn't masticated it thoroughly. Chewing is a temperamental matter to a great extent. One man chews his meal, quicker than another. If it isn't chewed at all, the stomach gets busy and helps out all it can and digests it after a while. It takes more effort of course, but not necessarily more time. What the teeth fail to do the stomach does to a great extent. The stomach has an extra amount of work if it is not masticated. You can't tell by looking at the cabbage how long it had been undergoing the process of digestion? If that was a healthy stomach with combined acid of 32 and nothing happened either physical or mental to interfere with digestion, those laboratory findings indicated that digestion had been progressing less than an hour. I never made an autopsy or examination of the contents of Mary Phagan's stomach.

REDIRECT EXAMINATION. The first stage of digestion is starch digestion. T^h^is progresses in the stomach until the contents become adid in all its parts. Then the starch digestion stops until the contents get out in the intestines and become alkaline in reaction, then the starch digestion is continued on beyond. The

alfactories act as a stimulant to the salivary glands.

DR.JOHN FUNK, Sworn for the State, in rebuttal.

I am Professor of Pathology and Bacteriologist I was shown by Dr.Harris, sections from the vaginal wall of Mary Phagan, sections taken near the skin service. I didn't see sections from the stomach or the contents. These sections showed that the epithelium wall was torn off at points immediately beneath that covering in the tissues below, and there was infiltrated pressure of blood. They were you might say engorged, and the white blood cells in those blood vessels were more numerous than you will find in a normal blood vessel. The blood vessels at some distance from the torn point were not so engorged, to the same extent as those blood vessels immediately in the vicinity of the hemorrhage. Those blood vessels were larger than they should be under normal circumstances, as compared with the bolld vessels in the vicinity of the tear. You couldn't tell about any discoloration, but there was blood there. It is reasonable to suppose that there was swelling there because of the infiltrated pressure of the blood in the tissues. Those conditions must have been produced prior to death, because the blood could not invade the tissues after death.
If a young lady, between thirteen and fourteen years old eats at eleven thirty A.M. a normal meal of bread and cabbage on a Saturday and at 3 A.M. Sunday morning she is found with a cord around her neck, the skin indented, the nails and flesh cyanotic, the tongue our and swollen, blue nails, everything indicating that she had been strangled to death, that rigor mortis had set in, and according to the best authorities had probably progressed from sixteen to twenty hours, and she was laying face down when found, and gravity had forced the blood into that part of the body next to the ground, that it had discolored her features, that immediately thereafter, between ten and two o'clock she was embalmed with a

fluid containing usual amount of formaldehyde, this being injected into the veins in the large cavities, she is interred thereafter, and in about a week or ten days she is disinterred, and you find in her stomach cabbage like that,(State's Exhibit G) and you find granules of starch undigested, and those starch granules are developed by the usual color tests,and you also find in that stomach thirty two degrees of combined hydrocholoric acid, the pylorus closed, and the duodenum, and six feet of the small intestines empty, no free hydrocholoric acid being present at all,nor dextrin, or erythrodextrin being found in any degree, and the uterus was somewhat enlarged, and the walls of the vagina show dilation and swelling, I would say that under those conditions that the epithelium was torn off before death,because of the changes in the blood vessels and tissues below the epithelium covering, and beeause of the presence of blood. I would not express an opinion as to how long cabbage had been in the stomach,from the appearance of the cabbage itself, takinging into consideration the combined hydrochloric acid of thirty two degrees ,the emptiness of the small intestine,the presence of starch granules,and the absence of free hydrocholoric acid, one can't say postively,but it is reasonable to assume that the digestion had progressed probably an hour , maybe a little more,maybe a little less.

CROSS EXAMINATION. Dr. Dorsey asked me to examine the sections of the vaginal wall last Saturday. The sections I examined were about a quarter of an inch wide and three quarters of an inch long. It It was about nine twenty-five thousandths of an inch thick, that is much thinner than tissue paper. I examined thirty or forty little strips. That was after this trial began. I was not present at the autopsy. As soon as a tissue receives an injury, it reacts in a very short time. The reaction shows up in the changes of the blood vessels. You can tell by the appearance of the blood vessels whether the injury before death or not, and you can give an approximate idea as to the length of time before death. I do not know from what body the sections were taken. I know that it was from a human vagina.

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EVI DENCE for DEFENDANT in SUR-REBUTTAL.

T. Y. BRENT, Sworn for the defendant in sur-rebuttal.

I have heard George Kendley on several occamsions express himself ver bitterly towards Leo Frank. He said he felt in this case just as he did about a couple of niggars hung down in Decatur; That he didn't know whether they had been guilty or not but somebody had to be hung for killing those street car men and it was just as good to hang one niggar as another, and that Frank was nothing but and old Jew and they ought to take him out and hang him anyhow.

CROSS EXAMINATION. I I have been employed by the defense to assist in subpoenaing witnesses. I took the part of Jim Conley in the experiment conducted by Dr. Wm. Owens at the factory on Sunday

M. E. STAHL, Sworn for the defendant, in sur-rebuttal

I have heard George Kendley, the conductor, express his feelings toward Leo Frank. I was standing on the rear platform, and he said that Frank was as quilty as a snake, and should be hu hung, and that id the court didn't convict him that he would be one of five or seven that would get him.

MISS C. S. HAAS, Sworn for the defendant, in sur-rebuttal.

I heard Kendly two weeks ago talk about the Frank case so loud that the entire street car heard it. He said that circumstantial evidemce was the best kind of evidence to convice a man on and if there was any doubt, the State should be given the benefit of it, and that 90 % of the best people in the city, including himself, thought that Frank was guilty and ought to hang.

N. SINKOVITZ, Sworn for the defendant, in sur-rebuttal

I am a pawnbroker. I know M. E. McCoy. He has pawned his watch to me lately. The last time was January 11,1913. It was in my place of business on the 26th of April, 1913. He paid up his loan on August 16, last Saturday, during this trial. This is the same watch I have been handling for him during the last two years CROSS EXAMINATION. My records here show that he took it out Saturday.

S. L. ASHER, Sworn for the defendant, in sur-rebuttal.

About two weeks ago I was coming to town between 5 and 10 Minutes to one on the car and there was a man who was talking very loud about the Frank case and all of a sudden he said, "They ought to take that damn Jew out and hang him anyway". I took his number down to report him.

CROSS EXAMINATION. I have not had a chance to report since it happened.

ADDITIONAL STATEMENT MADE BY DEFENDANT, LEO. M. FRANK.

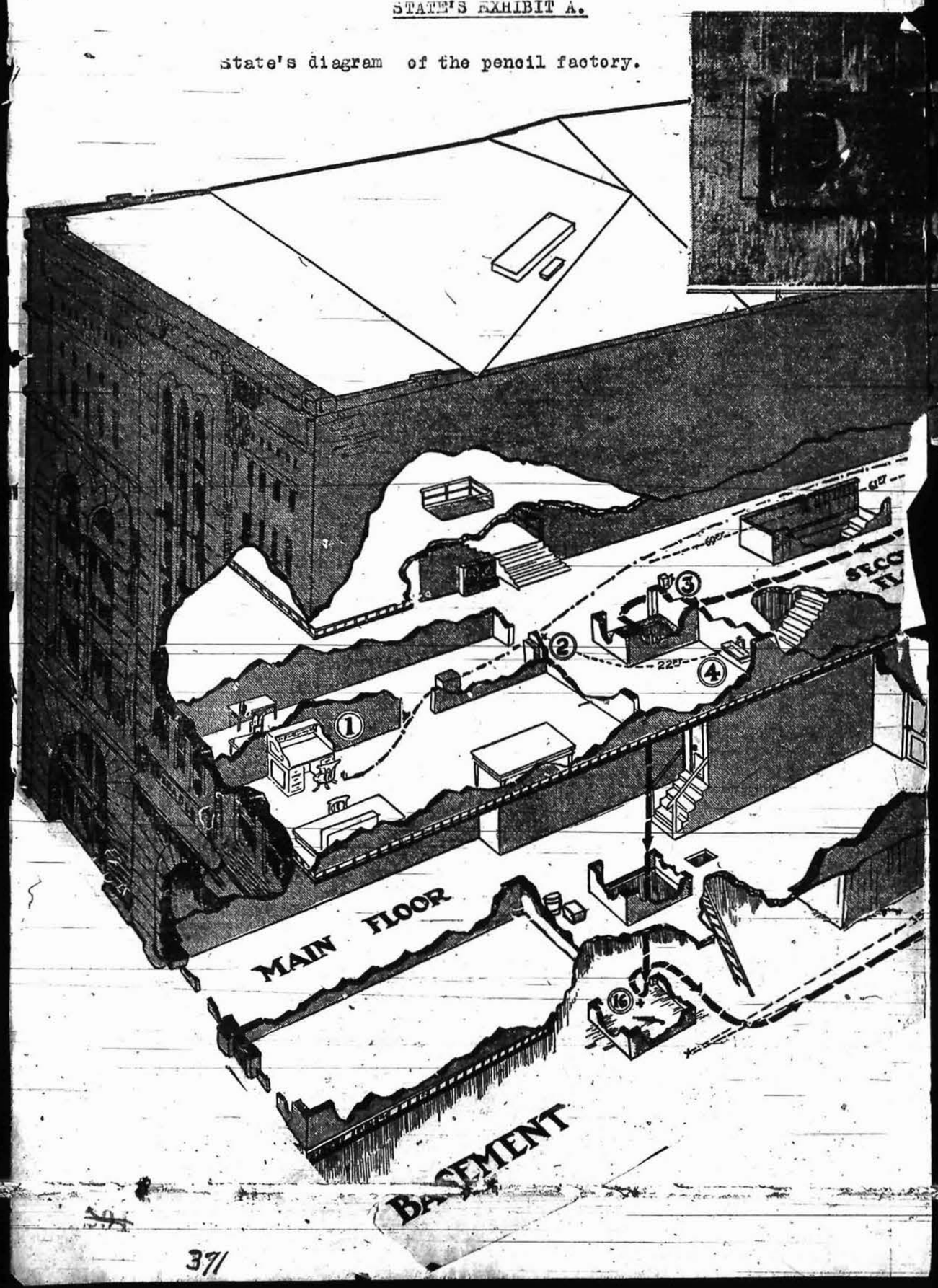
In reply to the statement of the boy that he saw me talking to Mary Phagan when she backed away from me, that is absolutely false, that never occured. In reply to the two girls, Robinson and Newell, that they saw me talking the Mary Phagan and that I called her "Mary", I wish to say that they are mistaken It is very possible that I have talked to the little girl in going through the factory and examining the work, but I never knew her name, either to call her "Mary Phagan", "Miss Phagan", or "Mary".

In reference to the statements of the two women who say that they saw me going into the dressing room with Miss Rebecca Carson, I wish to state that that is utterly false. It is a slander on the young lady, and I wish to state that as far as my knowledge of Miss Rebecca Carson goes, she is a lady of unblemished character.

DEFENDANT CLOSES.

STATE'S EXHIBIT A.

State's diagram of the pencil factory.



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STATE'S EXHIBIT A.

State's diagram of the pencil factory.

DEFENSE BATT

RISONER FRANK AND SHERIFF ON WAY FROM JAIL TO COURT

BR

PAT

WAS

M. Frank,
on left,
nd Sheriff
V. Mangum.

STATE'S EXHIBIT B.

Frank's statement made before N.A.Lanford,Chief of Detectives on Monday morning,April 28, 1913, this statement being unsigned

"I am General Supreintendent and Director of the National Pencil Company. in Atlanta I have held that position since Aug. 10, 1908. My place of business is at 37 to 41 So. Forsyth St. We have about 107 employees in that plant, male and female. I guess there are a few more girls than boys. Saturday,April 26th, was a holiday with our Company and the factory was shut down. There were several people who come in during the morning . The office boy and the stenographer were in the office with me until noon. They left about 12 or a little after. We have a day watchman there. He left shortly before 12 o'clock. After the office boy and the stenographer left, this little girl, Mary Phagan came in, but at the time I didn't know that was her name. She came in between 12;05 and 12;10, maybe 12;07, to get her pay envelope, her salary. I paid her and she went out of the office. I was in the inner office at my desk, the furtherest office to the left from the main office. It was impossible to see the direction she went in when she left. My impression was that she just walked away, I didn't pay any particular attention. I didn't keep the door looked downstairs that morning because the mail was coming in. I looked it at 1;10 when I went to dinner. Arthur White and Harry Denham were also in the building. They were working on the machinery, doing repair work, working on thetop floor of the building, which is the 4th floor, towards the rear or about the middle of the building, but a little more to the rear. They were tightening up the belts, they are not machinists, one is a foreman in one department and the other is an assistant in another, and Denham was assisting White, and Mrs. White, the wife of Arthur White, was also in the building. She left about 1 o'clock, I went up there and told them I was going to dinnerand they had to get out, and they said they had not finished and I said how long will it take, and they said until some time in the afternoon, and then I said "Mrs.White you will have to go, for I am going to lock these boys in here." Anyone from the inside can open the outside door, but not the inside door , which I locked. You can go in the basement from the front through the trap door. No sir, they could get up the steps if I was out. I locked the outer door and the inner door. I got back at three o'clock, and maybe two or three minutes before, and I went to the office and took off my coat and then went upstairs to tell those boys I was back, and I couldn't find them at first, they were back in the dipping room, in the rear, and I said "are you ready" and they said "we are just ready" and I said "all right" ring out when you go down to let me know when you go out" and they rang out, and Arthur White come in the office and said "Mr.Frank loan me $2.00" and I said "what's the matter, we just paid off" and he said "my wife robbed me", and I give him $2.00 and he walked away, and the two of them walked out. I locked the outer door behind them. When I am in there is no need of locking the inner door. There was omly one person I was looking for to come in, and that was the nightwatchman. He got there at 20 minutes to four. I had previously arranged for him to get there. On Friday night I told him, after he got his money, I give him the keys and I said "you had better come around early tomorrow because I may go to the ball game" and he come early, ~~xxxx

was right in front of me. I said,"I will be ready in a minutes" and he went downstairs and I come to the office and put on my coat and hat and followed him and went out. When I went out, talking to Newt Lee was J.M.Gantt, a man I had fired about two weeks previpus. Newt told me he wanted to go up to get a pair of shoes he left while he was working there, and Gantt said to me, "~~xxx~~ Newt don't want me to go up" and he said "you can go with me Mr.Frank" and I said "that's all right, go with him Newt" and I went on home, and I got home about 6;25. Nothing else happened; that's all I know. I don't know what time Gantt came down after he went up. I saw him go in and I locked the door after him, but I didn't try them. I telephoned Newt. I tried to telephone him when I got home, he punches the clock at half hour intervals, and the clock and the phone is in the office, and I didn't get an answer and at 7 o'clock I called him and asked him if Gantt got his shoe and he said yes, he got them, and I said is everything all right and he said yes, and the next thing I knew they called me at 7;30 the next morning. I don't know ~~xxxxx~~ that our watchman has been in the habit of letting people in the factory at any time. I have never heard of it. I never had any trouble with the watchman about it. As to whether any of our employees go there at night, Gantt did when he was working there, he had a key and sometimes he would have some work left over. I never have seen him go out until I go out, I go out and come back, but he has come back before I left, but that is part of his duty. I took a bath Saturday night at my home. I changed my clothes. The clothes that I changed are at home, and this is the suit of clothes I was wearing Saturday. After I left the shop I went to Jacob's Pharmacy and bought a box of candy for my wife and got home about 6;25.

STATE'S EXHIBIT C.

Piece of cord found around Mary Phagan's neck, about size of a heavy twine, with a knot in it.

STATE'S EXHIBIT D.

Rag that was found around Mary Phagan's neck, with blood on it. White piece of cloth, soiled. Looked as if it was a piece torn off from petticoat.

STATE'S EXHIBIT E.

Four or five chips of wood, with red splotches on them, chipped up from the second floor of the National Pencil Company factory in front of ladies dressing room.

STATE'S EXHIBIT F.

Shirt found by detectives in trash barrel at Newt Lee's home. Shirt was very bloody; blood was on both sides of shirt, high up on the arm-puts on the inside.

STATE'S EXHIBIT G.

Jar containing cabbage extracted from the stomach of Mary Phagan by Dr. Harris. Cabbage was not disintegrated, but was in a whole piece.

STATE'S EXHIBIT H.

Scratch pad that Conley wrote on at the ~~dictation of Frank~~ Ordinary white scratch pad.

STATE'S EXHIBIT I.

Portion of the signed statement of E.F.Holloway given to Solicitor H. M. Dorsey:

"I don't know C.B.Dalton. I do know Daisy Hopkins. She worked at the factory not less than eight or ten months. I never did see any man go in the factory with Daisy Hopkins after the employees had gone on a Saturday. If they ever came there, they came after I left. I never did know of Daisy Hopkins or other girls going up in the factory on Saturday afternoon with any men.....

"This power box that run the elevator is kept locked all the time. I keep it locked. The key is kept in the office. I locked it Saturday. I put the key back in the office. I always lock it and unlock it. I didn't go to the factory on Sunday. The key was hanging on the same nail on Monday.

STATE'S EXHIBIT J.

Affidavit executed by Minola McKnight for Solicitor Dorsey, as follows:-

"State of Georgia,
County of Fulton.

Personally appeared before me a Notary Public in and for the above state and county, Minola McKnight, who lives in the rear of 351 Pulliam St., Atlanta, Ga., who being duly sworn deposes and says:

On Saturday morning, April 26, 1913, Mr. Frank left home about eight o'clock, and Albert, my husband, was there Saturday too, Albert got there I guess about a quarter after one and he was there when Mr. Frank come for dinner, which was about half past one, but Mr. Frank did not eat any dinner, and he left in about ten minutes after he got there. Mr. Frank come back to the house at seven o'clock that night, and Albert was there when he got there. Albert had gone home that evening but he come back. I don't know what time he got there, but he come sometime before Mr. Frank did, and Mr. Frank eat supper about seven o'clock, and when I left there that night about eightno'clock, I left Mr. Frank there.

Sunday morning I got there about eight o'clock, and there was an automobile standing in front of the house and I didn't pay any attention to it, I saw a man in the automobile get a pucket of water and pour into it. Mr. Frank's wife was downstairs and Mr. and Mrs. Selig were upstairs. Albert was there Sunday morning, but I don't remember what time he got there. I called them down to breakfast about half past eight and I found out that Mr. Frank was gone; Mr. and Mrs. Selig eat breakfast, but Mrs. Frank didn't eat until Mr. Frank come back and then they eat breakfast together. I didn't hear them say anything at the breakfast table. After dinner I understood them to say that a girl and Mr. Frank were caught at the office Saturday. I don't know who said it, Miss Lucile (Mrs. Frank) and Mr. and Mrs. Selig and Mr. Frank were standing there talking, after dinner when they said it; I understood them to say it was a Jew girl.

On Tuesday Mr. Frank says to me, "It is mighty bad Minola, I might have to go to jail about this girl and I don't know anything about it."

Sunday, Miss Lucile said to Mrs. Selig that Mr. Frank didn't rest so good Saturday night; she said he was drunk and wouldn't let her sleep with him, and she said she slept on the floor on the rug by the bed because Mr. Frank was drinking. Miss Lucile said Sunday that Mr. Frank told her Saturday night that he was in trouble, and that he didn't know the reason why he would murder, and he told his wife to get his pistol and let him kill himself. I heard Miss Lucile say that to Mrs. Selig, and it got away with Mrs. Selig mighty bad, she didn't know what to think. I haven't heard Miss Lucile say whether she believed it or not. I don't know why Mrs. Frank didn't come to see her husband, but it was a pretty good while before she would come to see him, maybe two weeks. She would tell me "Wasn't it mighty bad that he was locked up, she would say "Minola I don't know what I am going to do."

When I left home to go to the Solicitor General's office, they told me to mind how I talked. They pay me $3.50 a week, but last week they paid me $4., and one week she paid me $6.50. up to the time of the murder, I was getting $3.50 a week and the week right after the murder, I don't remember how much she paid me, and the next week they paid me $3.50, and the next week they paid me $6.50, and the next week they paid me $4. and the next week they paid me $4. One week, I don't remember which one, Mrs. Selig gave me $5. but it wasn't for my work, and they didn't [illegible] Minola". I understood that it was a tip for me to keep quiet. They would tell me to mind how I talked and Miss Lucile give me a hat.

Q. Is that the reason you didn't tell the Solicitor yesterday all about this, that Miss Lucile and the others had told you

not to say anything about what happened at home there?
A. Yes sir.
Q. Is that true?
A. Yes sir.
Q. And that's the reason you would rather have been locked up last night than tell?
A. Yes sir.
Q. Has Mr.Pickett or Mr.Gravens or Mr.Campbell or myself influenced you in any way or threatened you in any way to make this statement?
A. No sir.
Q. You make it of your own free will and accord in their presence and in the presence of Mr. Gordon, your attorney?
A. Yes.sir.

(Signed) Minola McKnight.

Sworn to and subscribed before me,
this 3rd day of June, 1913.
(Signed) G.C.February,
Notary Public, Fulton County,Ga.

STATE'S EXHIBIT K.

Specimen of Frank's handwriting made by Frank for the detectives at the police station.

He said he would
have me laid down like the night he hit it but that long tall
black negro did it by
himself

Man that negro fire
down here did that when
I went to make water and
he pushed me down a hole
a long Tall negro Black that
had it.

J.N.C. 4/29/13

STATE'S EXHIBIT L.

A small whip handle found by detective McWorth at the pencil factory.

STATE'S EXHIBIT M.

Clothes worn by Mary Phagan consisting of hat, hair ribbons (2), dress, corset with hose supporters attached, one broken, corset cover, knit undervest, underskirt, drawers,(right leg torn and soiled with blood), pair of silk garters, pair of hose, pair of low shoes, handkerchief, ~~xxxxx~~ parasol.

STATE'S EXHIBIT N.

Copy of the Minutes of the State Board of Health, found on pages 144-145 thereof, reading as follows:

"The President then addressed the Board at length on his reasons for thinking that the Secretary should be requested to resign, the subjects dealt with being too enormous and too lengthy to be included here in their entirety. After the President's address, the Board adjourned and reassembled again at four o'clock in the afternoon, at which time Dr. Harris's side of the controversy was heard."

"~~The President (of the Board, Dr. Westmoreland) then addressed the Board at length on his reasons for thinking that the Secretary should be requested to resign, the subjects~~

"The Secretary not having been present at what transpired following this was not in a position to take note as to the proceeding,but was informed bymembers on adjournment that it was their wish that he should still continue as Secretary and Director of the laboratories."

"The President then made a short statement in support of his protest against the Secretary, and reiterated some of the charges made at the previous meeting, and in addition, made objection against the Secretary's action in sending out antitoxin No. 64, which had been shown by tests made in Washington to be of less potency than it was originally labelled, and also condemning the Secretary for replacing Dr.Paullin and personally taking up the investigation of the malarial epidemic around the pond of the Central Georgia Power Company. The President then stated that he would publish the charges against the Secretary if the Board did not take such action regarding them as he thought right and proper. At the conclusion of the President's address, a talk was made by Dr. Doughty, in which he took exception to the former's attitude, and insisted that every member of the Board wished to do what was best for the State Board of Health and the people of Georgia, and that every one connected with the Board of Health should be willing to bow to the decision of this body. He ~~xxxxxxxx~~deprecated strongly the idea of giving to the press charges the publication of which would do no good, and which could only result in harm."

"On the President and Secretary being recalled an hour later, the President pro tem, Dr. Benedict, read the following resolution, which had been unanimously adopted by the Board on ~~motionn~~ of Dr. Harbin, seconded by Dr. Brown:-- the resolution having been drawn by a committee appointed by the Board, consisting of Drs. Benedict, [illegible]

"That the committee appointed to frame a resolution expressing the opinion of the Board with regard to the charges preferred

~~215~~

against the Secretary by the President of the Board in a report to the Governor, and upon which they are called upon to act, beg to report as follows:-

Resolved:- That the members of the Board present, after carefully considering the charges and all evidence in its possession, unanimously agree that while there have been certainnslight irregularitiesin the conduct of some departments of the laboratories of the State Board of Health, which should be corrected, these irregularities have not been so important in character or result as to call for or warrant the discontinuance of Dr.Harris as Secretary and director of laboratories as demanded by the President. The Board further directs that a copy of this resolution be transfmitted to the Governor."

STATE'S EXHIBIT O.

Telegram sent by Leo M. Frank.

"Atlanta,Ga. Apr. 28,1913

Mr.Adolph Montag,
c/o Imperial Hotel, New York.

You may have read in Atlanta papers of factory girl found dead Sunday morning in cellar of pencil factory. Police will eventually solve it. Assure my uncle I am all right in case he asks. Our company has case well in hand.

Leo M. Frank."

STATE'S EXHIBIT P.

Time slip punched for Solicitor Dorsey by L. T. Kendrick:

1	5.01
2	5.30
3	6.00
4	6.29
5	6.58
6	7.38
7	8.01
8	8.29
9	9.00
10	9.30
11	10.00
12	10.30
13	10.58
14	
15	11.59
16	12.30
17	12.59
18	1.29
19	2.00
20	2.31
21	3.00
22	3.30
23	3.59
24	4.30
25	5.00
26	
27	
28	
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30	

3000761

STATE'S EXHIBIT Q.

Miss Hattie Hall's testimony before Coroner's inquest, as follows:-

"He (Mr.Frank) came to Montag's before I went to his office. I went to his office after he went back, somewhere between 10;30 and 11. I didn't notice the clock. As to whether I got any financial sheet on Monday,or not, I remember the previous Saturday I was at the pencil factory and I helped him make up the financial sheet. I filled in part of it. I suppose by that he must have got it up. I transferred some of the things to that sheet. Mr. Frank made up most of the work and I transferred some of the things to that sheet. I really don't remember whether it was morning or afternoon. It was morning. I don't work on Saturday afternoons. I don't remember that I was in the inner office with him at any time except when I was taking the letters. He was pretty quiet in there. I suppose he was at work."

STATE'S EXHIBIT R.

Accident report to the Insurance Company relative to Duffy's injury.

"Claim Division,Branch Office,The Travelers Insurance Company,608-609 Fourth National Bank Building, Atlanta,Ga.

IMMEDIATE REPORT OF ACCIDENT.

Employee of National Pencil Company.
Address, 37-41 S. Forsyth St. City, Atlanta, State, Ga.
Date and hour of accident, Oct. 4th , 1912, 9;30 M.
Date of this report Oct. 4th ,1912

INJURED PERSON.	Name, J.E.Duffy Address,237 E. Fair St. Age, 21 Occupation, Running eyelet machine, Weekly wages,$6.60 Married or Single? Married. General duties? Running machine.
The MACHINE APPLIANCE,OR THING IMMEDIATELY CAUSING ACCIDENT	What was it? A piece of brass on machine. In whose control at the time? His own self. Was it sound and in good working order? Yes.
PLACE OF ACCIDENT.	Room or Dept. #18 A. No. Street City or Town
CONTRIBUTING CAUSES	Carelessness of injured person? NO. Violation or rules? NO Negligence of fellow workman? NO
THE ACCIDENT	Description, said party was putting a roll of brass on his machine. This brass is very sharp, and same cut into flesh, nearly to the bone. Name and addresses of witnesses: L.A.Irwin, Foreman Charlie Lee, machinist.
The INJURY	Nature and extent, Very painful cut to the bone, not serious if this brass does not cause poison to set in. Was surgical aid rendered? Yes. When? At once. By whom? Dr.Hancock Where? Atlanta Hospital.

H.G.Schiff,
Employer.

~~169~~ 380

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STATE'S EXHIBIT S.

Portion of the affidavit made by Lemmie Quinn for Solicitor Dorsey as follows:-

"The doors that lead up to the back stairs, after work hours are locked, but this door at the back of my department, the lock had been broken off and we placed a bar across it. The idea of that was to keep employees from the fourth floor going down from that deparrment and ringing out and getting their money before it was ready. Customarily it was closed. That was the purpose. There is no exit from the office floor to the street floor, except the front, there is a stairway leading from the office floor to the floor above. The back stairway is ordinarily closed with that bar, which makes it impossible for anybody to come from the upstairs down to the office floor. A man on the office floor could lift the bar and walk out, but I should not think that a man could come down to the office floor from above at all....

I went uptown when I left home between 12 and 12;20. I got to the pool room about 12;30..... He(Frank) said he didn't know that he would mention it, but he would mention it to his lawyers and see if they thought it was favorable to mention it. That must have been Wednesday of last week."

STATE'S EXHIBIT T.

Court papers with reference to the police records of Jim Conley, being seven in number.

Jas.	Connally,	Disorderly Conduct,	Fined 1.75 7/22/1904- Paid
"	"	same	" 15.75 10/15/07- Paid
Jim	"	same	1.75 7/18/05 U.G.B.
James	"	same	10.75 12/11/1907, U.G.B.
James	"	same	3.75 11/14/1906-Paid
Jimmie	"	same	3.75 3/5/1906 Paid
James	"	same	Sentenced 30 days 9/10/1912

STATE'S EXHIBIT U.

Pay envelope found by Barrett under his machine on the second floor of the factory. Ordinary pay envelope used by factory officers in paying off employees.

STATE'S EXHIBIT V.

Portion of the testimony of Emil Selig before Coroner's inquest as follows:-

"As to who else was present, my wife and his wife. They went to the opera before, probably, dinner was over, before he and I left. I stayed in the house. There was no one else there when he got there except me and my wife and him and his wife. The servant was there also. I am speaking about dinner time. I laid down a little while after dinner. I am sure about that. It was directly after dinner [illegible] room. The telephone is in the dining room. Mr. Frank stayed quite a little while at dinner. I don't know exactly how long he

stayed. No, he didn't leave before I up. Yes, I took a nap. He came a little after one and we ate dinner and I laid down and took a considerable nap."

STATE'S EXHIBIT W.

Portion of testimony of Mrs. Josephine Selig before the Coroner's inquest, as follows:-

"As to what he(Mr.Frank) said about this affair, I don't know if he made any reference to it. She(Mrs.Frank) had told me. I don't remember that he said anything at all about this crime. He probably spoke of it in a general way. He is superintendent of the pencil factory. I think I would have remembered such a remark if he had made it. He said that there was a little girl found ~~xxthxx~~ dead in the pencil factory that day. I didn't ask what her name was. I don't know that I asked any question at all, because I never really thought that it had any bearing on anything that I was interested in. It was not of interest to me. Naturally he would be concerned about it. I think he did seem unconcerned about it. I don't think he seemed to attach any great importance to it. I don't think he had anything to say about getting anybody to see what was the matter, or see who did it. I don't know what was the occasion of the first remark that Mr. Frank made about the thing. I suppose he had been there only a few minutes. Yes, he spoke about it before dinner. He mentioned the fact that a woman had been found down there. He mentioned that just casually. He didn't remark about the ~~xxxxxx~~ youth of the child or about the brutality of the crime, or describe any of the wounds, or wonder who was suspected, or give any theory as to how it happened. I don't think he expressed any anxiety or curiosity, or advance any theory as to how the thing had happened. He read the paper. There was no article about that in the paper. I cannot say that he dwelt on any article. Yes, he read the paper just as steadily and studiously as the night before. I don't think he made any difference at all. He did not seem to be a bit impressed on account of the thing having happened in the pencil factory.

~~STATE'S EXHIBIT X.~~

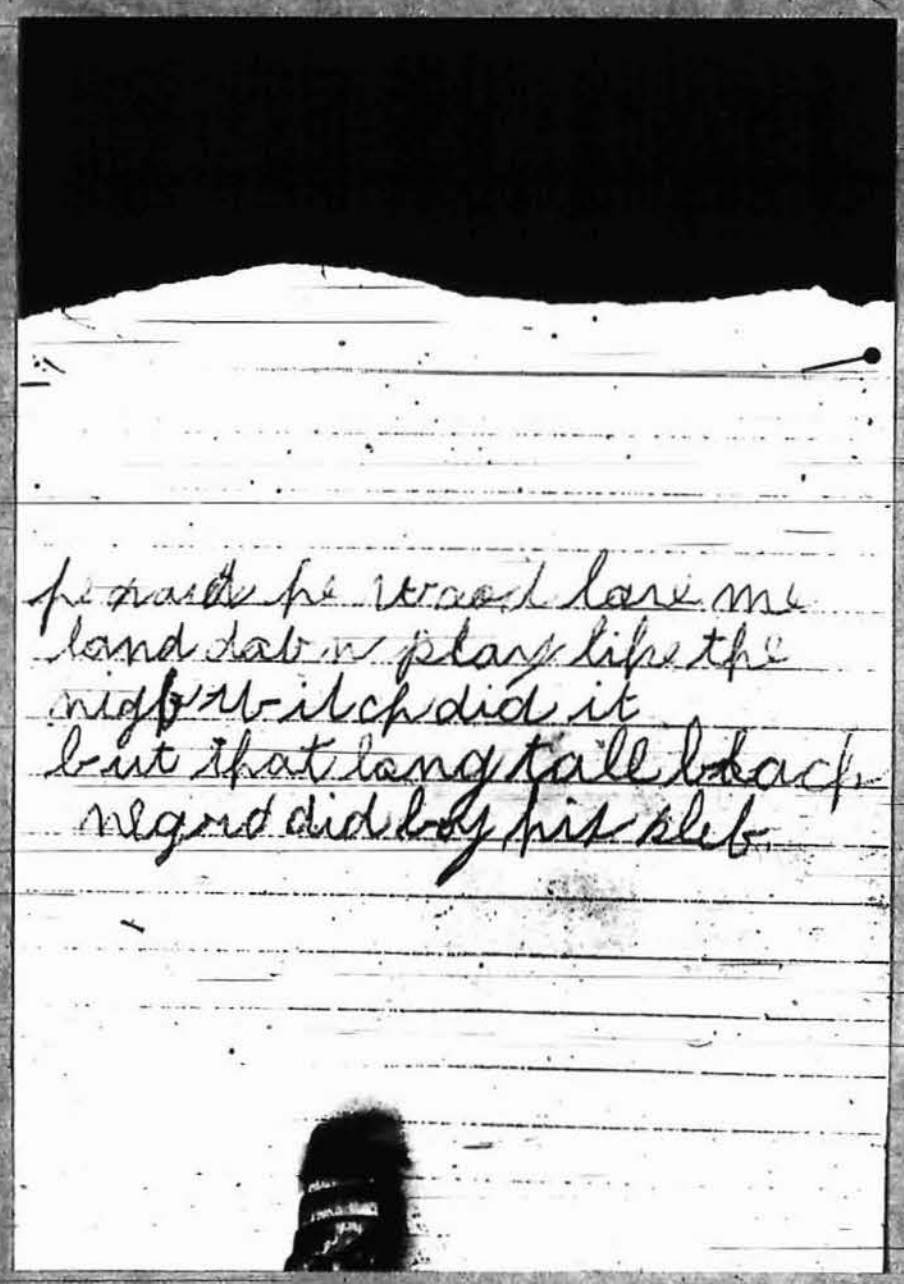
~~Note found by policemen by the side of the body of Mary Phagan written on white paper.~~

~~STATE'S EXHIBIT X~~

~~Note found by policeman by the side of the body of Mary Phagan, written on yellow paper.~~

STATE'S EXHIBIT M.

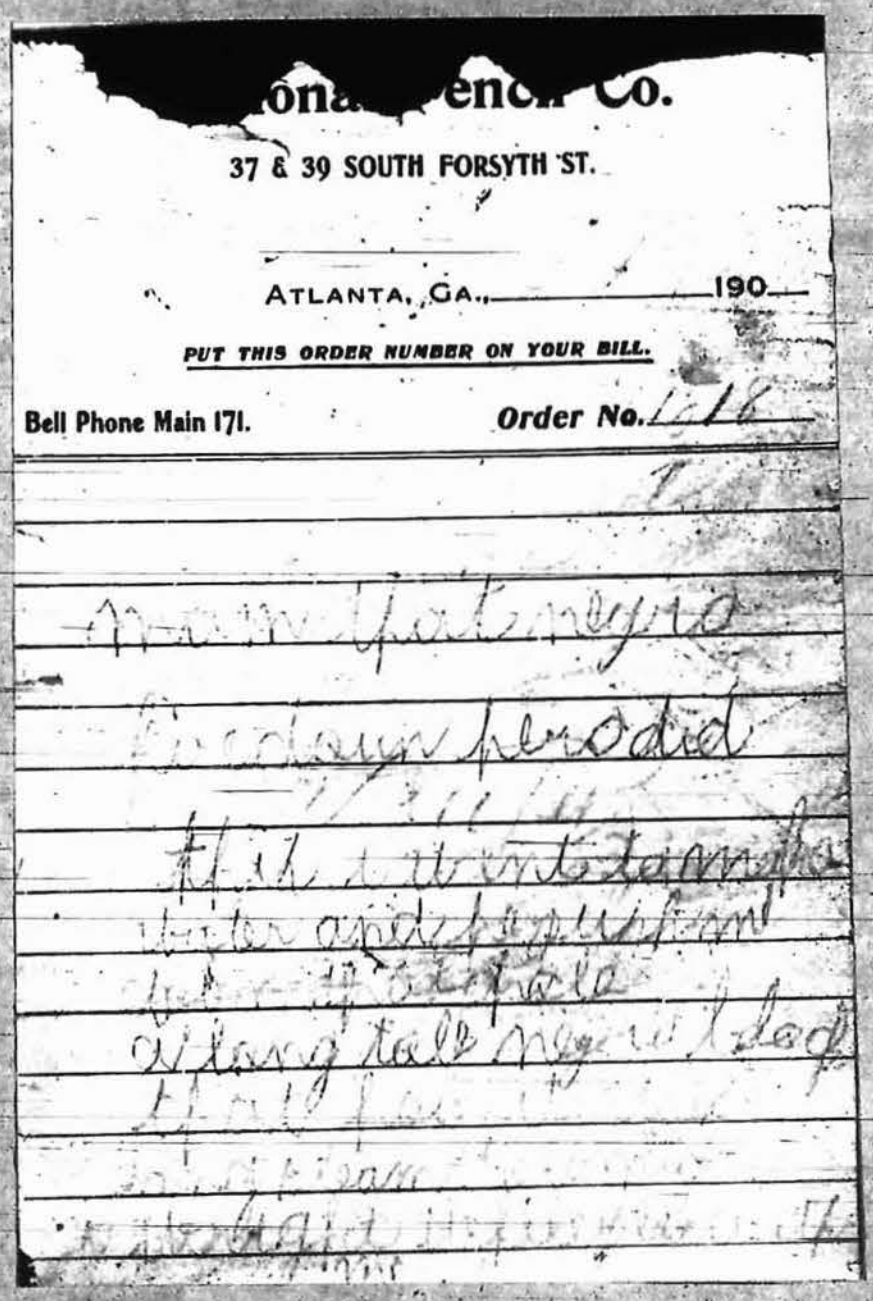
Note found by policemen in sawdust beside body of Mary Phagan, written on white paper.



He said he would love me, laid down play like the night
[illegible] did it but that long tall black negro did bay hisself.)

STATE'S EXHIBIT Z.

Note found by policemen in sawdust by side of the body of Mary Phagan, written on yellow paper.


...ona... ...enc... Co.

37 & 39 SOUTH FORSYTH ST.

ATLANTA, GA., 190

PUT THIS ORDER NUMBER ON YOUR BILL.

Bell Phone Main 171. Order No. 216

(Mam that negro fire down here did ~~that~~ this when I went to make water and he pushed me down a hole a long tall negro black that did ~~had it~~ (had) it. I right while play with me.)

~~201~~ 384

DEFENDANT'S EXHIBIT 1.

Time slip, dated April 28, taken out of clock by Frank.

Solicitor Dorsey stated in open court that he had made the erasure noted on this time slip, supposing it to have been put there by the detectives, the word erased "being" taken out at, 8:26 A.M."

For slips not obtained at our office, we decline responsibility.
Dey Time Register Co., Endicott, N. Y.

101	601
102	632
103	700
104	732
105	800
106	831
107	906
108	932
109	1029
110	1104
111	1200
112	107
113	135
114	203
115	301
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Date APR 28 1913

DEFENDANT'S EXHIBIT 4a

Packing room reports, being part of data for financial.

Form 003-3M-8-28-12.

NATIONAL PENCIL CO.,
ATLANTA, GA.

DAILY REPORT — Monday

Dept. Packing — Dept. No. 13

264-55 Oxford	46
383-37 Trumps	52 1/2
385-25 "	1
#1 Asst	6
	105 1/2
939-20 J. Wash.	121
688-40 J. Monroe R. I.	7
	128
315-10 P Cedar	16
med	105 1/2
Good	136 1/2
	286

Date 4/21/13 Signed Eula

Form 003-3M-8-28-12.

NATIONAL PENCIL CO.,
ATLANTA, GA.

DAILY REPORT — Tuesday

Dept. Packing — Dept. No. 13

86-510 Packard #2	46
97-420 Society #2	29
271-950 Genius	24
199-910 N. Emblem	18
116-210 Bowers Brog	5
	119
264-55 Oxford	83
150 Mystic N.T.	1
155 " N.T.	4
	88

Date 4/22/13 Signed Eula

Form 003-3M-8-28-12.

NATIONAL PENCIL CO.,
ATLANTA, GA.

DAILY REPORT — Wednesday

Dept. Packing — Dept. No. 13

86-510 Packard #2	5
294-T.O Bell Lee Dingle	8
199-910 N. Emblem	24
271-950 Genius	25
90-210 Cadillac #2	31 1/2
71-630 Worth 2752	28 1/2
	122

Date 4/23/13 Signed Eula

NATIONAL PENCIL CO.,
ATLANTA, GA.

DAILY REPORT — Wednesday

Dept. Packing — Dept. No. 13

264-55 Oxford	98 1/2
120 Broadway	5
34-45 Trumps	16
#110 Asst Fort Smith Ofc	25
	144
939-20 J. Wash	78
688-40 J Monroe	3
	81
	144
	122
	347

Date 4/23/13 Signed Eula

380	18 "	22.50	37x
	10 gross	25.00	930 x O.K. (Signed) Eula
	46	70.00	

DEFENDANT'S EXHIBIT 4a (cont'd)

Form 003-3M-8-28-12. 5

NATIONAL PENCIL CO.,
ATLANTA, GA.

Friday

DAILY REPORT

Dept. Packing Dept. No. 13

725	N Mfg	1/2
91-210	Cadillac #3	35
87-510	Packard #3	2
199-910	Nat. Emblem	60 1/2
62-660	University Shad	5 2 1/2
117-450	Longine #2 N.T.	1
326-210	Khedive #2	2 1/2
#1920	Asst. Nat. Flyer	2 1/2
		15-6 1/2

Date 4/18/13 Signed Eula

Form 003-3M-8-28-12. 6

NATIONAL PENCIL CO.,
ATLANTA, GA.

Saturday

DAILY REPORT

Dept. Packing Dept. No. 13

291-950	Geniys	9 1/2
91-210	Cadillac #3.	3 1/2
199-910	N. Emblem	3
116-210	Bowers Brag #2	6
760	Thesis Mustang #2	1
		23
	Good	
264-55	Oxford	66
378-155	Mystic	9 9 1/2
939-20	Le Wash	165-1/2
315-10	P. Cedar	4 2
	Good	31

Date 4/19/13 Signed Eula

Form 003-3M-8-28-12. 7

NATIONAL PENCIL CO.,
ATLANTA, GA.

Monday

DAILY REPORT

Dept. Packing Dept. No. 13

397-430	Lifting Bull	12 1/2
86-510	Packard #2	34 1/2
91-210	Cadillac #3	6
116-210	Bowers Brag	29 1/2
110-210	Khedive #2 N.T.	6
291-950	Geniys	32 1/2
97-420	Surety #7	9 1/2
#1920	Asst. N. P. Flyer	6
		136 1/2

Form 003-3M-8-28-12. 8

NATIONAL PENCIL CO.,
ATLANTA, GA.

Tuesday

DAILY REPORT

Dept. Packing Dept. No. 13

939-20	Le Wash.	94
688-40	J Monroe	11
		105
	R J.	
	Med	89
	Good	119
		313

389 389

DEFENDANT'S EXHIBIT 4a (cont'd)

Form 003-3M-8-28-12. 9

NATIONAL PENCIL CO.,
ATLANTA, GA.

DAILY REPORT Thursday

Dept. Packing Dept. No. 13

90 - 210	Cadillac #2	6 1/2
91 - 210	" #3	2
116 - 210	Bowers Brag	15 1/2
271 - 950	Genuine	71
274 - 470	Thoroughbred	43
#15	Asst Printed Cards	15
		153
34 - 45	Trumps	36
Asst #46	S. Bargain Assts.	50
" #53	Southwestern #115	50
		136

Date 4/24/13 Signed Eula

Form 003-3M-8-28-12. 10

NATIONAL PENCIL CO.,
ATLANTA, GA.

DAILY REPORT Thursday

Dept. Packing Dept. No. 13

939-20	Wash.	34
688-40	Monroe.	20
		54
R. C.		54
Med		136
Good		153
		343

Date 4/24/13 Signed Eula

DEFENDANT'S EXHIBIT 4b

Job department reports, being part of data for financial

Form 003-3M-8-28-12. 11

NATIONAL PENCIL CO.,
ATLANTA, GA.

DAILY REPORT

Dept. Job Dept. No. 22

504 -	Pol see	59
090 -	" "	20
506 -	" 30	10
3½	" 3½	12
90	" see	10
195	" 30	133
74	" see	30
		274

Date 4/21/13 Signed Fannie A

Form 003-3M-8-28-12.

NATIONAL PENCIL CO.,
ATLANTA, GA.

DAILY REPORT

Dept. Job Dept. No. 22

504 -	Pol see	12
3½ -	" 3½	69
74	" see	111
111	" "	25
112	" "	3
90	" "	3
506	" "	8
70	" "	16
75	" "	3
		250

Date 4/23/13 Signed [illegible]

DEFENDANT'S EXHIBIT 4b (cont'd)

Form 003-3M-8-28-12.

NATIONAL PENCIL CO.,
ATLANTA, GA.

DAILY REPORT

Dept. fob Dept. No. 22

111	Old see	19
74	" "	28
090	" "	13
506	" "	11
30	" 3's	97
75	" see	10
70	" "	22
504	" "	16
		216

Date 4/24/13 Signed Fannie A

Form 003-3M-8-28-12.

NATIONAL PENCIL CO.,
ATLANTA, GA.

DAILY REPORT

Dept. fob Dept. No. 22

910	Old see	3
114	" "	1
095	" 8's	47
		51
		216
		267

Date 4/24/13 Signed Fannie A

DEFENDANT'S EXHIBIT 4c

Daily report of lead deliveries from lead plant, part of data for financial.

1 Box	3992	910/#2	127 Gross
2 "	3993	-"	247 "
2 "	3994	-	254 "
2 "	3995	-	254 "
2 "	3996	2	163
			1045 gross
9 Box			
8 box	3863	940/#3	260 "
2 "	3910	950/#2	197
3 "	3911		335
3	3912		292
			2192 Gross
19 Box			
2 "	3976	852/7	260 "
4 "	3978	852/7	347
4 "	3979	"	347
29 Box			3787 Gross
4 box	3980	852/7	352 "
4 "	3981		352
			704 gross

(Signed) E.Weinkauf Apr/21,1913

391

DEFENDANT'S EXHIBIT "4D".

Report of tip deliveries from tip plant, being part of data for financial:

"Weekly report of Metal Dept. #18

April 24,1913.

Large Eyelet Mach.		204
Small	" "	440
Trimming	"	644
Knurling	"	855

Tips delivered

#6	830
#10	448
#12-Redipped	35
#17	64
	1,377

(Signed) L.A.Quinn

DEFENDANT'S EXHIBIT 5.

Average (of orders) sheet, being a complete record (beginning with the week ending Jan.16,1913) of the number of ordered received each week, classified as to price under different headings, said number being totaled at the end of each week and the average price ascertained. The following is a record of orders for the factory month of April,1913:

WEEK ENDING 4/22/13		6 oct. Rd	100 thru 140	150 thru 195	200 thru 295	300 & over
Friday	28	159	413	30	11½	105½
Saturday	29	3	28	30	2	6	5
Monday	31	5	258	8	7½	126	35
Tuesday	1	10	17	47	14	78	15½
Wednesday	2	12	165	132½	7	122	30½
Thursday	3	24	154	62	6½	70	15
Total Gr.		213	1035	318½	154	855	206½
Price per gr.		.60	.80	1.25	1.75	2.50	3.00
Total value		$127.80	828	397.13	269.50	2137.50	619.50
		$5515.43		3682.93		1.50 av.	

WEEK ENDING 4/10/13		6 oct. Rd	100 thru 140	150 thru 195	200 thru 295	300 & over
	4	33	162	280	52½	53	51½
	5	31	19	38½	12	47	16
	7	106	101	188	118	154½	86
	8	10	30	48	10	67	14
	9	5	—	2	8	4	2
	10	15	156	232	28	90	67½
		200	468	788½	496	325½	286½
		.60	.80	1.25	1.75	2.50	3.-
		120	374.40	985.62	868	813.75	859.50
		$4427	—	2774½	—	1.60 av.	

WEEK ENDING 4/17/13		6 oct Rd	100 thru 140	150 thru 195	200 thru 295	300 & over
Friday	11	—	—	—	—	—	—
Saturday	12	—	—	—	—	250	3
Monday	15	6	104	9	5	26	10
Tuesday	16	5	11	30	8	26	1
Wednesday	16	10	10	5	4	14	6
Thursday	17	55	173	256	21½	365	198½
Total gr.		76	298	322	234½	681	220½
Price per gr.		.60	.80	1.25	1.75	2.50	3.-
Total value		$45.60	238.40	$402.50	410.38	1702.50	661.50
		1832 gr.	$3460.88		1.89 av.		

WEEK ENDING 4/24/13		6 oct Rd	100 thru 140	150 thru 195	200 thru 295	300 & over
	18	9	103	65	9½	122	95
	19	—	26	81	13	52½	16
	21	53	118	79½	20	83	17
	22	28	205	115	101	9½	153½
	23	15	5	28	5	16½	
	24	10	29	11	—	110	100
		115	486	379½	148½	392½	381½
		60	80	1.25	1.75	2.50	3.-
		69.-	388.80	$474.38	259.88	983.75	1144.50
		$3320.31		1904 gr.		1.7 av.	

DEFENDANT'S EXHIBIT 6.

Value of shipments for week ending April 24, being part of data for financial.

SHIPMENTS WEEK ENDING 4/24/13

				(11.35	
				(38.37	
				(27.00	
				(23.40	
				(40.00	
				18th) 124.80	
				(14.20	
				(38.82	
				(23.39	
				(17.50	
				(14.66	
Apr.	18	400.75		((27.00	
"	19	482.00		(10.90	
"	21	1146.06		(8.90	
"	22	1457.95		(107.50	
"	23	706.63		19th) 14.86	
"	24	1245.57		(14.92	
		5438.78		(73.04	
				(43.90	
				(21.25	
				(135.10	
				(51.63	
				(69.55	
				(24.34	
				(114.00	
				21st (29.39	
				20th) 17.84	
				(15.07	
				(75.99	
				(13.70	
				(740.55	
				(33.25	
				(12.66	
				(12.00	
				(16.67	
				22nd) 10.00	
				(13.70	
				(138/30	
				(1267.28	
				(183.70	(204.32
				(13.04	(644.40
				(25.95	(145.00
				(29.45	(63.33
				(29.18	(24th) 28.00
				(28.80	(27.75
				23rd) 260.00	(13.48
				(20.00	(119.29
				(23.04	
				(18.49	
				(14.13	
				(30.00	
				(27.70	
				(5.13	

39

DEFENDANT'S EXHIBIT 7

Three pencil sheets(the last two lines of which are in Frank's handwriting), part of data for itemized sheet.

FACTORY RECORD

April 17- 1913

NATIONAL PENCIL CO., Atlanta, Ga. — PENCIL STOCK — Week Ending

	DATE	10 EX	20 EX	30 EX	40 EX	Tabs	135 X	120 X	130 X	130 EX SPL	35 X 37 X	45 X 55 X	140 X	155 N.T.P.	150 N.T.P.	160 X	170 X	180 X	100 X	1013	910 X	230 X	500 X	330 X	630 X	640 X	210 X	660 X	220 X	210 X SPL	660 X SPL	150 X	155 X SPL	260 X SPL	920 X	930 X	620 X	Primes & Cards @ 2.25	TOTAL
PENCILS PACKED	April 11		204				28				14		46	13½												6½												
	12		32				65						64	40																								
	14		19		21		42					61	36											13		8												
	15		53										13								8			10½														
	16				35	X	3														22½			15					14									
	17	100	10		38	574		10			10		4		7½						16½								15½	45							
	TOTAL	100	318		94	734	138	10			24	61	163	53½	7½						47			38½		14½			29½	45							
PENCILS SHIPPED	April 18	17	58		18							25									60					2½			35	52½							
	19	53	69									66		9½							3								9½								
	21	16	121		7	274					53½	46																	35½								
	22		94		11							80½		4½	1						18								5								
	23		38		3				5			114½									24								31½								
	24		34		20	517						36																	24							15	
	TOTAL	86	454		59	791			5		53½	371		104	1						105					2½			140½	52½						15	
In Stock End Last Week																																						
Made This Week																																						
TOTAL																																						
Shipped This Week																																						
In Stock End This Week																																						

FACTORY RECORD

TIONAL PENCIL CO., Atlanta, Ga. — PENCIL STOCK — Week Ending April 7, 1913

DATE	620 x SPL	510 x	430 x SPL	430 x	800 x	240 x	911 x	260 x	9014	902 x	903 x	904 x	280 x	280 x SPL	Jupiter Cont 110	#1	#2	#145	#105	#3	#115	#1900	#1910	#1920	#1640	#140 Spl	950 x	470 x	950 x SPL	260 x SPL	20th Cent.	San Domingo	Rio x Rio City		TOTAL
April 11				4			36½				8½											42½										1½		
" 12							4																									6½		
" 14							8½																									8½		
" 15				2			36½																5	5										
" 16				35			38																									2		
" 17														14½	50							4		15	10									
TOTAL				46			123½				8½			14½	50							4	42½	20	15							18½		
April 18																							2½											
" 19																																		
" 21				12½											6								6				91½					32½		
" 22																																21		
" 23														8	25																	25		
" 24																											100	71						
TOTAL				12½										8	25	6							8½				100	159						
Stock End Last Week																																		
Made This Week																																		
TOTAL																																		
Made This Week																																		
Stock End This Week																																		

FACTORY RECORD

April 13, 1913

NAL PENCIL CO., Atlanta, Ga. — PENCIL STOCK — Week Ending

DATE	3-Color Mfg.	Color Mfg.	740x	760x	770x	780x	790x	400x	400x SPL	440x	420x	420x SPL	440x	450x N.T.	460x	460x SPL	410x	480x SPL	220x SPL	Shim Case	1000	1001	JSD	Chattanooga 460x SPL	Cedar	WORTH 910-2253	WORTH 920-1510 N.T.	H.B. Vienna	270x SPL	570x SPL WORTH	910x SPL	210x N.T.	420-1501 WORTH	22.5° x Copley	Vienna N.T.	210x Black N.T.	Smith-Premier/Par WORTH 1530 x SPL-2552	TOTAL
11																	20																					425
12				1													10							3														224½
14	19														4½								24		6½	52												323
15																							72				17½	43	29	19								479½
16															22½													8	78½		56½	29						359
17																												2	59½				25	29½				1040
TAL	19														67		30						96	3	6½	52	17½	53	167	19	56½	29	25	29½				2857
18	19													1															2				½					274½
19																																						310½
21																													34½						6	9½		660
22																													46							29		313
23																													5								28½	347½
24																43																						860
TAL														1		43													87½				½		6	38½	28½	2765½
End eek																																						
This k																																						
L																																						
This k																																						
End eek																																						

DEFENDANT'S EXHIBIT 8/

Eight carbon copies of eight letters, all dated April 26,1913, and addressed to

Schroder & Lombard Engraving Co., 18 Franklin St.,N. Y.
Henry Diston & Sons, Philadelphia, Pa.
J.G.McCrory Co., 621 Broadway, N. Y.
Southern Bargain House, Richmond, Va.
American Zylacq Co., Inc., 8 Linvingston St., Newark, N.J.
A.J.Sossner, 154 Duane St., N. Y.
The Pullman Co., Chicago, Ill.
Schroder & Lombard, 18 Franklin St., N. Y.

and signed "National Pencil Company, by _____, Supt." On each letter are the initials "LMF:HH".

Each letter acknowledges receipt of letter received from the firm addressed and whose names are set forth above (which original letters from said firms are attached to the respective carbon copy which it purports to answer), and have to do with matters of business connected with the National Pencil Company.

DEFENDANT'S EXHIBIT 9.

A large book containing all of the financial sheets of the National Pencil Company, beginning with the week ending November 25, 1909, and ending with the week ending April 24, 1913. Each of these sheets purport to cover the financial operations of the National Pencil Company for the respective week named thereon, and in form is identical with the sheet of April 24, 1913, set forth herein as "Defendant's Exhibit 2".

DEFENDANT'S EXHIBIT 10.

A small receipt book containing the following receipts:

April 19,1913, Received of National Pencil Co. 15 cents-Kerosene. (Signed) Nute Lee, F.

April 21,1913, Received of National Pencil Co. 75 cents-type. (Signed) A.Mann, F.

April 21,1913, Received of National Pencil Co. Two dollars, Dray. (Signed) Truman McCrary.

April 21,1913. Received of National Pencil Co. ~~xtwoxdollarsx~~ $2.50, cases. (Signed) John Glass.

April 21,1913. Received of National Pencil Co. 35¢ -express-Warner. (Signed) So. Express Co., F.

April 21,1913. Received of National Pencil Co. 50¢ -postage stamps. (Signed) A. Mann, F.

April 21,1913. Received of National Pencil Co. 03¢-parcel post. (Signed) A. Mann, F.

April 22,1913. Received of National Pencil Co. $2.00, rent two weeks typewriter. (Signed) Underwood Typewriter Co., F.

April 22,1913, Received of National Pencil Co., $1.25, cases (Signed) Dan Reid, F.

April 22,1913, Received of National Pencil Co.,$1.70, Dray, (Signed) Truman McCrary.

April 22,1913. Received of National Pencil Co. 45¢ supplies. (Signed) Mr.Schneegass.

April 22,1913, Received of National Pencil Co. $3.50, cases. (Signed) John Glass, F.

April 23,1913, Received of National Pencil Co. $1.75, cases, (Signed) Dan Reid, F.

April 23,1913. Received of National Pencil Co. 85¢, inv. 2/1/13 (Signed) King Hdw Co., Green.

April 23,1913, Received of National Pencil Co. $1.50, dray. (Signed) Truman McCrary.

April 24,1913, Received of National Pencil Co. 50¢ postage stamps. (Signed) A. Mann, F.

April24,1913. Received of National Pencil Co. 11.50,tinsmith job. (Signed) Paul Armbrust,R.F.D.#3,Atlanta,Ga.

April 24,1913. Received of National Pencil Co. 13¢-parcel post (Signed) A.Mann, F.

April 24,1913. Received of National Pencil Co. 05¢ -thread. (Signed) A.Mann, F.

April 24,1913. Received of National Pencil Co. 1.00, dray. (Signed) Truman McCrary.

April 25,1913. Received of National Pencil Co. 10¢ carefare. (Signed) A. Mann, F.

April 26,1913, Received of National Pencil Co. $2.00. Dray

April 26,1913. Received of National Pencil Co. 75¢-express. (Signed) So. Express Co., F.

April 26/1913. Rec'd of N.P.Co.$4/00 time for office work (signed)Herbert Wright . F

DEFENDANT'S EXHIBIT 11.

Comparison sheet, 1912-1913, being part of data for financial sheet:

Comparison 1912-13

Wk ending Apr.24/13

(45 hrs)1912		1913
Payroll	1036. 15	1052.55
Mch.Shop	47.75	70.00
Expense	1584.55	1623.20
Matl.Cost	1271. 46	1552.55
Total expenditures	2856.01	3175.75
Net Value Productions	2431.22	3066.31
Apparent Results -Deficit	424.79	Def.109.44
Value shipments	3323.22	5438.78
	2509 gr.	4374 Gr.
Productions: Net	2132⅛	2719½
Good	457⅛	700
Medium	829	629⅛
Cheap	546	599
Jobs	300	791
Percent Jobs	14%	29%

Remarks:
19120 55 hrs .work

399

Page 56 of House Order Book of National Pencil Company DEFENDANT'S EXHIBIT 12. Page 57.

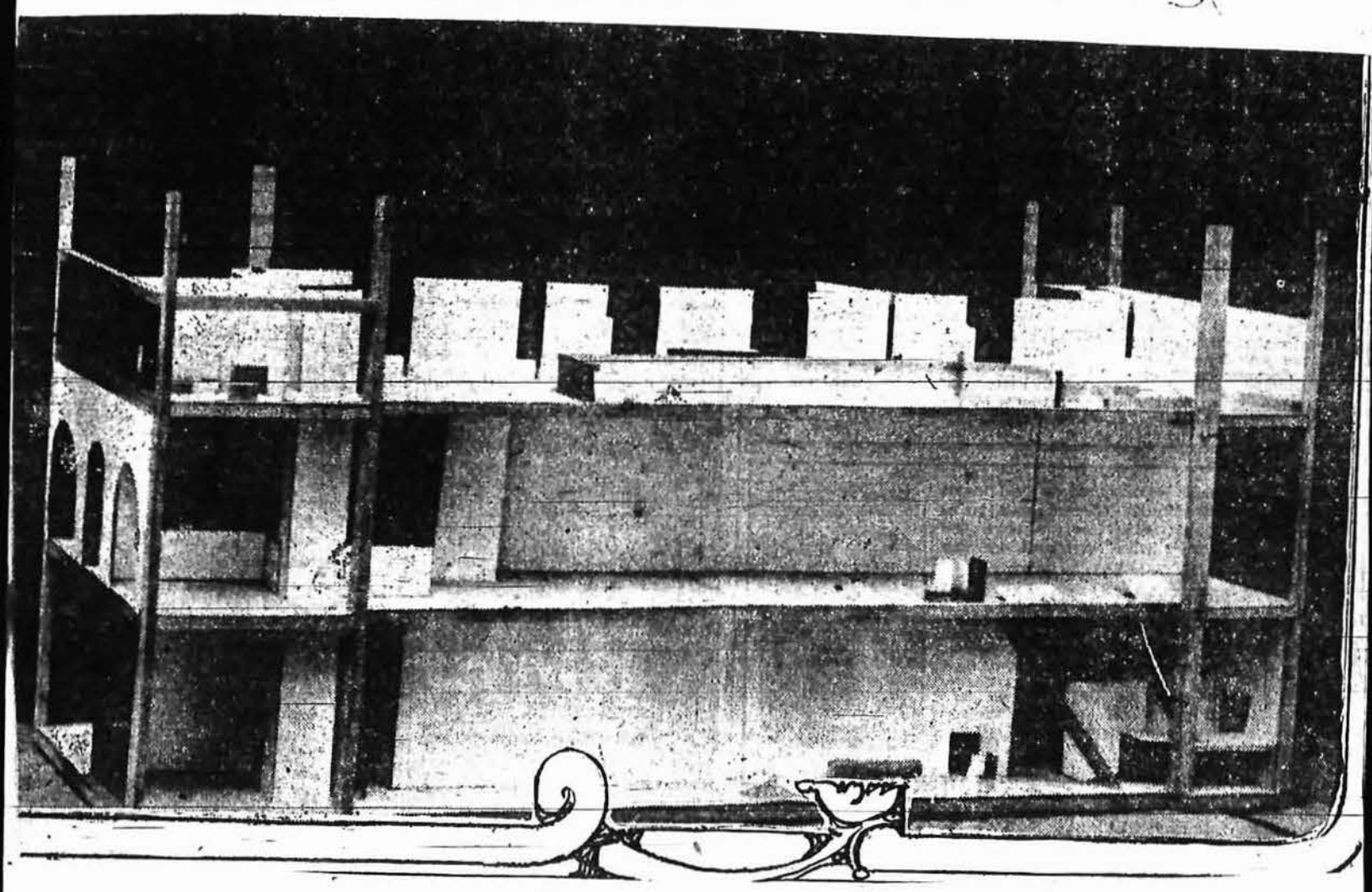
Salesman	Ship to		Kind	Order No.	City-State	date rec'd	how ship	shipped
7187-D.P.	F.W.W.Co.	#57-	Reg.-	4/24/13-	St.Joe, Mo.	-4/26/13-	at once-	4/28/13
7188-D.P.	"	#68-	"	4/23/13-	Terra Haute, Ind.	4/26/13	" "	4/28/13
7189-D.P.	"	#253-	"	4/22/13-	Logansport, Ind.	4/26/13	" "	4/28/13
7190-D.P.	"	#585	"	4/22/13-	DeKalb,Ill.	4/26/13	" "	4/28/13
7191-D.P.		#25	"	4/24/13-	Wilkesbarre, Pa.	4/26/13	" "	4/28/13
7192-D.P.	"	262	"	4/24/13-	Saratoga Springs,N.Y.	4/26/13	" "	4/28/13
7193-Mail,-Soo 5 &10¢ U.S. Store			"	04355-	Sault Ste Marie,Mich.	4/26/13	" "	7/9/13
7194-H.G.	Beutell Bros.Co		"	4/23/13-	Dubuque,Iowa-	4/26/13	" "	5/6/13
7195-Facty-	Montag Bros.		"	4/26/13-	Atlanta,Ga.	4/26/13	" "	6/9/13
7196-Jno. Lawrie-	John Magnus Co		"	134-	Chicago,Ill.	4/26/13	" "	4/28/13
7197-G.H.-	R.E.Kindell Co.-	Spec.		4/24/13-	Cincinnati, Ohio.	4/26/13	" "	

400

000745

DEFENDANT'S EXHIBIT 13.

Model of the National Pencil Company made by T/H.Willett.



40/1

DEFENDANT'S EXHIBIT 14.to 24 inclusive.

Eleven original orders addressed to the National Pencil Co., Atlanta, Ga., signed by the following firms:

F.W.Woolworth Co.(Store #57- St. Joe.,Mo.
" " " " 68- Terra Haute,Ind.
" " " " 253- Logansport, Ind.
" " " " 585- DeKalb,Ill.
" " " " 25-Wilkesbarre,Pa.
" " " " 262-Saratoga Springs,N.Y.
Soo 5 & 10¢ Store, Sault Ste. Marie,Mich.
Beutell Bros. Co., Dubuque, Iowa
Montag Bros., Atlanta, Ga.
John Magnus Co., Chicago, Ill.
R.E.Kindell & Co., Cincinnati, Ohio.

Said orders request the National Pencil Company to ship to said respective firms,at once, certain merchandise (pencils) noted therein. Each of said orders describes the quantity of pencils desired, the style number and a complete description of the kind of pencils wanted, name, color, shape, etc. On each order/is respectively stamped the National Pencil Company's number as follows: "House No.7187; House No.7188; House No.7189; House No.7190; House No. 7191; House No.7192; House No.7193; House No.7194; House No.7194; House No.7195; House No.7196; House No.7197; House No.7198; House No.7199." There is also stamped on each of said orders the following:- "Acknowledged,April 26,1913, by H.H.", and also "Shipped/complete, April 28,1913", with the exception of the order of R. E. Kindell & Company, House No.7197, which is marked on the face of it "cancelled June 17, 1913", the letter of R. E. Kindell & Company cancelling said order being attached thereto.

DEFENDANT'S EXHIBIT 25.

Requisition sheet in handwriting of Leo M.Frank as follows:

House No. 7187

Date April 26 191 3

Salesman D.P.

Bill to

Order No. 4/24/13

NATIONAL PENCIL CO., ATLANTA, GA.,

MANUFACTURERS

Ship to F.W.W.Co. #57 At 617 Felix Str.

Ship When at once St. Joseph,

Remarks: Mo.

April 28,1913

Sales No.	Amount	Name or Remarks	
45x	4	~~#4~~	4 ✓
220x	1/2	#4	1/2 ✓
280x	1/2	#4	1/2 ✓
440x	1/2	#5	1/2 ✓
720x	1/2	W.P.	
630X	1/2		1/2 ✓
910	1/2		1/2 ✓
902	1/2		1/2 ✓
430	1/2		1/2 ✓
240	1/2		1/2 ✓

O.K. HGS Complete

Date Complete Shipment April 28,1913

Shipped Complete April 28,1913

2700.

X03

DEFENDANT'S EXHIBIT 86.

Requisition sheet in handwriting of Leo M.Frank as follows:

House Nodxx
7188

Date April 26,1913 191

Salesman } D.P.
Bill to }

Order No. 4/23/13

NATIONAL PENCIL CO., ATLANTA, GA.,

MANUFACTURERS

Ship to F.W.W.Co. #68 At Terre Haute,

Ship When at once

Remarks: Ind.

Sales No.	Amount	Name or Remarks	April 28,1913
37	1		1 ✓
35	3		3 ✓
45	2		2 ✓
120	2		2 ✓
155	3		3 ✓
920	1		1 ✓
910	1		1 ✓

Complete

O.K.
HGS

Date
Complete
Shipment
Apr.28,1913

Shipped Complete
Apr. 28,1913.

2701

404

DEFENDANT'S EXHIBIT 27.

Requisition sheet in handwriting of Leo M.Frank as follows:

House No. 7189

Date Apr. 26,1913 191

Salesman
Bill to D.P.

Order No. 4/22/13

NATIONAL PENCIL CO., ATLANTA, GA.,

MANUFACTURERS

Ship to F.W.W.CO. #25 At Logansport,

Ship When At once

Remarks: c/o Penna Ry Ind.

Sales No.	Amount	Name or Remarks	Apr.28,1913
10	4		4 ✓
37	1		1 ✓
35	1		1 ✓
20	2	30 Sub.Pls.	2 ✓
45	1		1 ✓
140	1		1 ✓
155	1		1 ✓
660	1		1 ✓
630	1		1 ✓
910	1		1 ✓
1002	1		1 ✓
1003	1		1 ✓
440	1/2		1/2 ✓
280	1/2		1/2 ✓

O.K.
HGS Complete

Date complete shipment Apr.28,1913

SHIPPED COMPLETE
Apr.28,1913
2703

405

DEFENDANT'S EXHIBIT 28.

Requisition sheet in handwriting of Leo M.Frank as follows:

House No.
7190

Date Apr. 26,1913 191

Salesman / Bill to D.P.

Order No. 4/22/13

NATIONAL PENCIL CO., ATLANTA, GA.,

MANUFACTURERS

Ship to F.W.W.Co. #585 At 347 E. Main St.

Ship When at once DeKalb, Ill.

Remarks:

Sales No.	Amount	Name or Remarks	Apr.28,1913
10	4		4
20	2	30 sub.Pts.	2
37	2		2
35	2		2
45	2		2
120	2		2

O.K.
HGS

Complete

Date complete shipment

Apr.28,1913

SHIPPED COMPLETE
Apr.28,1913
-2704

406

DEFENDANT'S EXHIBIT 29.

Requisition sheet in handwriting of Leo M.Frank as follows:

House No. 7191

Date Apr. 26,1913 191

Salesman
Bill to D.P.

Order No. 4/24/13

NATIONAL PENCIL CO., ATLANTA, GA.,

MANUFACTURERS

Ship to F.W.W.Co. #25 At Wilkes-Barre,

Ship When a/o Penna Ry Penna

Remarks: at once

Sales No.	Amount	Name or Remarks	Apr.29,1913
10	5		5 ✓
35	5		5 ✓
770	2	#3	2 ✓
430	5		5 ✓
640	2		2 ✓
240	2		2 ✓
902	1		1 ✓
280	1/2	#2	1/2 ✓
280	1/2	#3	1/2 ✓
280	1/2	#4	1/2 ✓
440	1	#2	1 ✓
440	1	#3	1 ✓
440	1	#4	1 ✓
720	1	W P	1 ✓

OK
HGS

OS
Complete

date
complete
shipment
Apr.29,1913

SHIPPED COMPLETE
Apr.29,1913.

407

DEFENDANT'S EXHIBIT 30.

Requisition sheet in handwritting of Leo M.Frank, as follows:

House No. 7192

Date Apr. 26,1913 191

Salesman / Bill to D.P.

Order No4/24/13

NATIONAL PENCIL CO., ATLANTA, GA.,

MANUFACTURERS

Ship to F.W.W.Co/ #262 At Saratoga Springs,

Ship When at once N.Y.

Remarks: c/o D. & H.Ry 416-18 Broadway

Sales No.	Amount	Name or Remarks	4/28
10	5		5 ✓
20	5	30 Sub Pts.	5 ✓
37	1		1 ✓
35	1		1 ✓
45	1		1 ✓
120	1		1 ✓
140	1		1 ✓
155	1		1 ✓
770	1	#3	1 ✓
660	1		1 ✓
630	1		1 ✓
920	1	930 Sub.	1 ✓
910	1		1 ✓
950	1		1 ✓
430	1		1 ✓
220	1	#3	1 ✓
220	1	#4	1 ✓
640	1		1 ✓
1002	1/2		1/2 ✓
1003	1		1 ✓
280	1/2	#2	1/2 ✓
280	1/2	#3	1/2 ✓
480	1/2		1/2 ✓
440	1/2		1/2 ✓
720	1/2	W P	OK HCS OS

SHIPPED COMPLETE APR 28 1913 2699

408

DEFENDANT'S EXHIBIT 31.

Requisition sheet in handwriting of Leo M.Frank, as follows:

House No. 7193

Date Apr. 26,1913 191

Salesman
Bill to Mail

Order No. C4355

NATIONAL PENCIL CO., ATLANTA, GA.,

MANUFACTURERS

Ship to Soo 5 & 10¢ Store At Sault Ste.Marie,

Ship When August 1 st Mich

Remarks:

Sales No.	Amount	Name or Remarks
10	10	
35-37	5	Asstd
45	5	
910	5	
640	5	
1002	2	
1003	2	

Best Route to Chicago

then by water

409

DEFENDANT'S EXHIBIT 32.

Requisition sheet in handwriting of Leo M. Frank, as follows:

House No. 7194

Date Apr. 26,1913 191

Salesman / Bill to H.G.

Order No. 4/23/13

NATIONAL PENCIL CO., ATLANTA, GA.,

MANUFACTURERS

Ship to Buetell Bros. Co. At 819-859 Clay Str. Dubuque, Iowa

Ship When At once

Remarks:

Sales No.	Amount	Name or Remarks	May 6,13
480	5		5 ✓
210	5		5 ✓
55	25		25 ✓
20	20		20 ✓
30	25		25 ✓

O.K.
HGS Complete

(Shipping Clerk
Include all B'O's with this)

date
complete
shipment
May6,1913

SHIPPED COMPLETE
May6,1913
2733

410

DEFENDANT'S EXHIBIT 33

Requisition sheet in handwriting of Leo M.Frank, as follows:

House No. 7195

Date Apr. 26,1913 191

Salesman
Bill to Facty

Order No. 4/26/13

NATIONAL PENCIL CO., ATLANTA, GA.,

MANUFACTURERS

Ship to Montag Bros. At Atlanta,

Ship When at once Ga.

Remarks:

Sales No.	Amount	Name or Remarks		May 26,1913
135x ✓	50	Blks. sub. 35 gro.Pts.	50 ✓	
1900 ✓	10	added 4/29		8
1920 ✓	10	Transferred		5
1540 ✓	10	"	10 ✓	
1910 ✓	10	"	10 ✓	
40x ✓	50	added 5/6/13	50 ✓	
420x ✓	2	" " "	2 ✓	
420x ✓	10	" 5/26/13		10

O.K.
HGS

OK
HGS

FILE

B

May 6,1913

May 26,1913

DEFENDANT'S EXHIBIT 34.

Requisition sheet in handwriting of Leo M.Frank, as follows:

House No. 7196

Date Apr.26,1913 191

Salesman
Bill to Hno Lawrie & Sons

Order No. 134

NATIONAL PENCIL CO., ATLANTA, GA.,

MANUFACTURERS

Ship to John Magnus Co. At 1055 W. 35th St.

Ship When at once

Remarks: Chicago, Ill.

Sales No.	Amount	Name or Remarks	Apr. 28,1913
155x	25		25

O.K.
HGS

Careful selection of goods.

Complete

date
complete
shipment
Apr.28,1913

SHIPPED COMPLETE
Apr.28,1913
2698

DEFENDANT'S EXHIBIT 55.

Requisition sheet in handwriting of Leo M.Frank, as follows:

House No. 7197

Date Apr. 26,1913 191

Salesman H.G.
Bill to

Order No. 4/24/13

NATIONAL PENCIL CO., ATLANTA, GA.,

MANUFACTURERS

Ship to R.E.Kindell & Co. At 312 Plum St.,

Ship When at once Cincinnati, Ohip

Remarks:

Sales No.	Amount	Name or Remarks	
160x Sp.	50	F.O. 154	51/1/2

No stamp

Hold

CANCELLED
6/17/13

DEFENDANT'S EXHIBIT 36.

STATEMENT OF JAMES CONLEY MADE TO JOHN R.BLACK AND H. SCOTT AT POLICE BARRACKS, ATLANTA, GA., SUNDAY, MAY 18, 1913.

My full name is James Conley. I reside 172 Rhodes St. with Lorine Jones, who claims to be from Marietta,Ga. This woman is not my wife, and I have been living with her a little over two years. I have been having intercourse with Lorine Jones. I have been employed as elevator man and roustabout at the National Pencil Co. factory in Atlanta for the past two years. Before going to the pencil factory,I was employed by Dr. L.Palmer at Broad and Mitchell Streets, Atlanta, as a buggy driver. I worked for him for about one year. Previous to that time I worked for the Orr Stationery Co., Atlanta, as driver of wagon. Previous to that time I worked for Adam Woodward, as a stable hand for a year and three months. Previous to that time I worked for Mr. Copes wood yard, Atlanta, for five years. I am now 27 years of age, single.

On Saturday, April 26, 1913, I arose between 9 A.M. and 9;30 A.M. and ate my breakfast. At 10;30, I left the house, 172 Rhodes St. and went to Peters Street and visited a number of saloons between Fair and Peters and Haynes and Peters St. I purchased a half pine of Rye Whiskey from a negro who was walking along Peters St. about 11;00 A.M., I paying 40 cents for this whiskey. I visited the Butt-In Saloon and went back to the pool tables and saw three colored men shooting dice, and I joined them and won 90 cents from them. I then purchased some beer, paying 15 cents. I then walked up the street and visited Early's beer saloon, purchased two beers and wine, paying ten cents for same. This was all the money I spent on Peters St. and I arrived home at 2;30 P. M. and I found L. Jones ~~xx~~ there and she asked me if I had any money. I replied yes, and gave her $3.50 (one dollar in greenback, and the rest silver money). I drew $3.75 from the pencil factory on Friday, April 25, between 6;00 and 6;30. I spent 15 cents for meats on Friday night. Before receiving the $3.75,I did not have any money in my pocket. At 3;30 P. M. or 4;00 P. M., Saturday, April 26, I purcgased 15 cents worth of beer and then returned to the House, and sent the little girl out to get 10 cents worth of stove wood and five cents worth of pan sausage. I remained at home all Saturday night and at 12 o'clock noon, Sunday, April 27, I walked up on Mitchel St. and got a cigarette, remaining there until 12;45 P.M., and returned home, remaining until 6;30 P. M., when I went to my mother's house, 92 Tatnall St. and got my lunch and then returned home and I remained at home until Monday, April 28th.

On April 28, I reported for work at the pencil factory at 7;05 A. M.

(Signed) James Conley.

414

DEFENDANT'S EXHIBIT 37.

STATEMENT OF JAMES CONLEY OF MAY24,1913

STATE OF GEORGIA,
COUNTY OF FULTON.

Personally appeared before the undersigned, a Notary Public, in and for the above State and County, James Conley, who being sworn on oath says:

On Friday evening before the holiday, about four minutes to one o'clock, Mr.Frank come up the aisle and asked me to come to his office. That was the isle on the fourth floor where I was working, and when I went down to the office he asked me could I write and I told him yes I could write a little bit, and he give me a scratch pad and told me what to put on it, and told me to put on there "dear mother","a long tall, black negro did this by himself," and he told me to write it two or three times on there. I wrote it on a white scratch pad, x single ruled. He went to his desk and pulled out another scratch pad, a brownish looking scratch pad, and looked at my writing and wrote on that himself, but when I went to his office he asked me if I wanted a cigarette, and I told him yes, but they didn't allow any smoking in the factory, and he pulled out a box of cigarettes that cost 15¢ a box, and in that box he had $2.50, two paper dollars and two quarters, and I taken one of the cigarettes and handed him the box and I told him he had some money in the box, and he said that was all right I was welcome to that for I was a good working negro around there, and then he asked me where Gordon Bailey (Snowball they call him) was, and I told him on the elevator and he asked me if I knew the night watchman and I told him no sir, I didn't know him, and he asked me if I ever saw him in the basement and I told him no sir I never did see him down there, but he could ask the fireman and maybe he could tell him more about that than I could, and then Mr. Frank was laughing and jollying and going on in the office, and I asked him not to take out any money for that watch man I owed, for I didn't have any to spare, and he told me he wouldn't, but he would see to me getting some money a little bit later. He told me he had some wealthy people in Brooklyn, and then he held his head up and looking out of the corner of his eyes and said "why should I hang" and that's all I remember him saying to me. When I asked him not to take out any money for the watch, he said you ought not to buy any watch, for that big fat wife of mine wants me to buy her an automobile but he wouldn't do it; I never did see his wife. On Tuesday morning after the holiday on Saturday, before Mr.Frank got in jail, he come up the isle where I was sweeping and held his head over to me and whispered to me to be a good boy and that was all he said to me.

(Signed) James Conley

Sworn to and subscribed before me
this 24th day of May, 1913.

(Signed) G.C.February,
Notary Public,Fulton County,Georgia.
(Seal)

DEFENDANT'S EXHIBIT 38.

STATEMENT OF JIM CONLEY, MAY 28, 1913.

STATE OF GEORGIA,
COUNTY OF FULTON.

Personally appeared before me, a Notary Public, in and for the above State and County, James Conley, who, being duly sworn, on oath says:

I make this statement, my second statement, in regard to the statement I made the statement that I went to the pencil factory

000760

on Friday, April 25,191., and went to Frank's office at four minutes to one, which is a mistake. I made this statement in regard to Friday in order that I might not be accused of knowing anything of this murder, for I thought if I put myself there on Saturday, they might accuse me of having a hand in it, and I now make my second and last statement regarding the matter freely and voluntarily, after thinking over the situation, and I have made up my mind to tell the whole truth, and I make it freely and voluntarily, without the prmmise of any reward or from force or fear of punishment in any way.

I got up Saturday morning, April 26, between 9 and half past 9, I was at home 172 Rhodes St. There is a clock on the Atlanta University and I looked at that clock after I put on my clothes; I went to the door and pumred some water out of the wash pan and then I looked at the clock on the Atlanta University, but I forget what time it was exactly, but I remember it was betweenn 9 and half past nine. Then I washed my face and I eat some steak and some liver and bread and drank a cup of tea, and then I sat down in a chair a little while, about ten minutes, I guess, and then I told my wife to give me back the three dollars and I would get some paper money to keep her from losing it, to pay her rent with, and she give it to me, and I told her I was going to Peters St. and I went to Peters st. and stopped at the beer saloon near the corner of Peters and Haynes St. and I bought two beers there for myself and give another fellow a beer, I don't know what his name was, but they call him Bob. I don't know where he works but he had a whip over his shoulder. I stayed in that saloon 3 or 4 minutes just long enough to drink that beer, and then I walks up to the Buttin-In Saloon and walks back to the pool table, and there were 4 fellows back there shotting dice, 5 with me, one was named Joe Bobs, and one was named Bob Williams, and I won 90¢. I don't know how long we were shooting for we were shooting on the sly unbeknownst to the bar tender, I guess we were shooting about ten minutes, and then I come to the bar and bought a glass of beer there at the Butten In Saloon, and then I went to Early's beer saloon on Peters St. and I bought a glass of beer there and I walked back to the toilet and stood there and made a cigarette and then bought another glass of beer, and I come out and bought a half pint of whiskey and I drank some of the whiskey, and then I started to the Capitol City Laundry and on my way there I met Mr. Frank, at the corner of Forsyth and Nelson Sts going to Montags, and he told me to wait a minutes, and he asked me where I was going and I told him I was going to the Capitol City Laundry to see my mother, and he didn't say nothing, only he said to wait a minute until he come back, that he was going to see the Montags and I stood there until he come back, he was gone about 20 minutes, I guess. He come back and told me to come to the factory, that he wanted to see me, and I went to the factory with him, walking behind him, and he stopped at the Curtis Drug Store at Forsyth and Mitchell St. and he got a drink, and I waited on the outside until he come out, and then he told me to come on and I went to the factory with him. He had a box with him, which he carried with him to theMontags, it has an opener to it, and after we got to the factory, Mr. Frank took the box and put it there at the trash barrel, which was just to the right of the steps as you go in, he put a box there for me to sit on. There were some great big boxes back further. He told me to sit down there until I heard him whistle. He just took his foot and pushed a box over there for me to sit on. Then he told me not to let Mr. Darley see me, and after Mr. Frank went up the steps, in a few minutes here comes a young lady downstairs, that was Miss Mattie, I think she had on a dark red suit, and a rain cloak and a parasol in her hand, but I didn't notice her hat. Then here comes Mr. Darley down, and he had on a gray suit of clothes, didn't have any hat on his head, and he stopped Miss Mattie at the front door, and when he stopped her I saw Miss Mattie with a handkerchief wiping her eyes. it seemed to me like she had been crying

416

000761

that you get that next week" and they stood there and talked a-
while,but I could not hear anything else they said, then she went
on out the door and Mr.Darley come back up the steps,and Mr.Darley
stayed up there a good while,then he come down and left and I did
not see him anymore. Then here comes Mr.Holloway down,about 5
minutes after Mr.Darley had gone; Mr.Holloway went out on the side-
walk and stood there 3 or 5 minutes and then he come and went back
up the steps, and then here come another colored fellow, a pegged
legged one, and he went up the steps,he had some bills in his
hands, and Mr. Holloway come back down with the pegged legged one
and went out on the sidewalk and looked at the fellow's wagon,but
what he said to him I don't know. It was wagon that had sides to
it and I didn't see the name on it. It wasn't a regular dray, I
don't think, it looked like it might have come from that plate
glass company on Alabama St. Then Mr. Holloway went back upstairs
and it wasn't long before Mr. Holloway come back down and was
gone for good. I don't know how long,but I guess he stayed upstairs
long enough to put on his coat and hat. I saw Mr.Holloway turn up
to his right towards Hunter St., then there comes another lady
into the factory, she had on a green looking dress, she works on
the fourth floor, and she walked with her head down, sort of stoop
shouldered, she works for Arthur White. She stayed up there 7 or
8 minutes and then she come back down with her money in her hand,
and she stood just a little opposite me and tore the envelope
open right there and took her money out and counted it, and she
shut her hand up and went out the door and she turned towards
Hunter St. and about 15 or 20 minutes after there, there wasn't
any passing at all, and I set there on the box with my head against
the trash barrel. I stretched my feet out and put my hat in my
lap, but I couldn't say whether I went to sleep or not, and the
next thing that attracted my attention,Mr. Frank whistled for me
twice,just like this (indicating), and when he whistled I went on
up the stairs and the double doors on the stairway were closed
and I opened them and they shut themselves, and Mr.Frank was stand-
ing at the top of the steps and he said "you heard me did you" n
and I said "yes sir", and Mr.Frank grabbed me by my arm and he was
squeezing my arm so tight his hand was trembling. He had his glasses
on,and he had me just like he was walking down the street with a
lady, and like he didn't want me to look behind me at all, and I
thought it was because he had me so tight that made him tremble,
and he carried me through the first office and into his private
office, and then he come back in there,and he didn't say nothing,
he grabbed up a box of sulphur matches,and he went back in the
outer office, the door was open between his office and the outer
office, and then he saw two ladies coming and he said to me,"gee
here comes Miss Emma Clark and Miss Corinthia Hall" and he come
back in there tome, he was walking fast and seemed to be excited,
and he said to me "come right in here Jim", and he motioned to the
wardrobe and I was a little slow about it and Mr.Frank grabbed me
and give me a shove and put me in the wardrobe and he shut the doors
and told me to stay there until after they had gone and I just heard
Miss Emma say "good morning,Mr.Frank,are you alone" and Mr.Frank
said "yes" and I couldn't hear them say nothing else, but I didn't
know it was Miss Corinthia Hall until Mr.Frank spoke and said it was
but I heard Miss Emma's voice; they didn't stay there long,until
they were gone, I didn't hear them. The next move was,Mr.Frank
come and let me out of the wardrobe. I don't remember Miss Hall and
Miss Clarke using the telephone, if they did I didn't hear them,
and I didn't see them myself. I stayed in the wardrobe a pretty
good while for the whiskey and beer I had drank got me to
sweating. I couldn't hear them talking only I heard Miss Emma say
"good morning". If they had been talking loud I could have heard
them, but if they were talking low I couldn't. If they went up-
stairs,Mr.Frank must have kept right behind them to see that they
didn't take off anything. Then after a while Mr. Frank he come in-
to the office and he pulled out one of those round chairs from

I said "I got too hot in there", and he said "yes I see you are sweating". When he opened the door I was fixing to step out, and his eyes were looking larger than they usually look, and he jerked the door open and I was right there in front of the door, and then Mr. Frank said to me to sit down in a chair, in the one that turns all the way around, and when I sat down he told me to get up and shut the door; that was the door between his office and the stenographer's office, and got up and shut it, and he said "Jim can you write". He was sitting down facing me and he brushed back his hair and I said "Yes sir, I can write a little bit Mr. Frank", and then he give me a pencil that he got off the top of his desk, and there was nothing on it, he turned a sheet over for me to write, and then he told me what to put on there, he told me to put on there "dear mother, a long tall black negro did this by hisself", and when I went down to put down "negro" I put it "n-e-g-r-o-s" and he said don't put no "s" there, he said that means negros and he said now rub the "s" off and I rubbed the "s" out, he said "it means just one person like yourself" and he told me to write it again and I written it, and he looked at it and slapped me on the back and said "that's all right, old boy" and he said "write it again" and I written it for him three times. Then Mr. Frank reared back in his chair and asked me if I wanted a smoke and I told him yes sir, and he taken out a cigarette for himself and handed me the box and he sort of turned around when he handed me the box and I taken out a cigarette and he handed me the box of matches, and I taken out a cigarette and lit it and saw some money in the box and I handed the box of cigarettes back and he told me that was all right to keep them, and I told him he had some money in the box and he said that was all right I could have that. I taken it and stuck it in my pocket and then Mr. Frank looked around at me and held up his head towards the top of the house and said "why should I hang, I have wealthy people in Brooklyn". I didn't know what he was talking about, I didn't have any idea in the world what he was talking about and he was winking and rubbing his hands together and touching me on the shank with his foot and took a deep breath, he said "why should I hang" and shook his head and rubbed his hands together. Then he asked me where was Snowball (Gordon Bailey) and I told him I didn't know sir, and he asked me did I know the night watchman and I told him no sir, I didn't know the night watchman personally, I just knew him by passing him, and he asked me if I had seen him in the basement at any time and I told him nor sir, that he would have to ask the fireman about that for he was down in the basement more than any of us was, and when I told Mr. Frank that he stuck one finger to his mouth and said "s-s-sh" that's all right", and then Mr. Frank told me he was going to take that note I had written and send it on off in a letter to his people when he wrote, and recommend me to them because I was a good working negro around there, and he liked me, and when Mr. Frank said that I said "don't take out another dollar for that watchman" and he said "all right I won't," and he said "I don't see why you want to buy a watch, because that big fat wife of mine wanted me to buy her an automobile but I won't do it" I didn't say nothing about that for it didn't concern me and it didn't seem to concern the subject he was talking about at first, and then Mr. Frank told me when he wrote that letter he would not forget about me and he said "well I will see you later about this" and I said "all right sir" and then he reached in his pocket and pulled out his watch and said "It is nearly time for me to be going to dinner", but I didn't look at the watch. Then I asked Mr. Frank was that all he wanted with me right now and he said yes, and then I asked him again "do you mean I can have what's in the box sure enough Mr. Frank" and he said "yes", but all the time though he was talking and jollying and going on with me, and I began to think it was something, for a white man to be playing with a negro, and during the time he cast his eyes up to the top of the house and said "why should I hang, I have wealthy people in Brooklyn". I never did know where Mr. Frank's home was, I thought this was his home all the time. Then Mr. Frank said "I

said "well,is that all you want for good Mr. Frank" and he said "yes" and I saw him go to his desk and take out a brownish looking scratch pad. The one I wrote on was white and was single ruled and I saw him take out a brownish looking one from his desk and he took his pencil and made a mark on it. I took it to be an "M",but he shut the tablet up and looked at me and told me that was all he wanted with me, and he come all the way to the top of the steps and he come 3 or 4 steps down to where he could see me until I hit the sidewalk, it seems as if he was watching me to see if I would take anything as I went out, but there was nothing to take unless I took a great big box,but when I passed those two doors on the steps there, Mr. Frank told me to leave one of them open, and I taken a little piece of iron they have there, and pushed it against the door to keep it from shutting and went on out in the street, and I pulled the front doors to when I went out, and I went to the beer saloon across the street and opened the cigarette box and it had two paper dollars in there and two silver quarters, and I laughed and said "good luck has done struck me", and I bought a ten cent double header and then went back to Peters St. and hand't none of the boys got there that I run with and I walks up there to the moving picture show and looked at the pictures and they didn't seem to be any good, and I come back down Peters St. looking for that fellow I got the half pint whiskey front, but I couldn't find him,and I struck out for home, and when I got home it was about half past two o'clock, and I took the bucket and went to Joe Carr's at Mangum and Magnolia St., and got fifteen cents worth of beer in it and come back home and sent the little girl to get a dime's worth of stove wood and a nickle's worth of pan sausgge, and I eat half of the pan sausage up raw, and I give my old lady $3.50, and the other little change I kept it, and I layed down across the bed and there is where I stayed until about half past eight that night, and I got up and set in front of the fire a little while and got to swimming at the head, and then here comes her sister, and after she left I went to bed and I didn't leave home no more until 12 o'clock Sunday, in the day time, and I walked up on Mitchell St. and stayed up there until a quarter to one, and I come on back home, I was feeling bad, and I layed down across the bed and stayed there until 6 o'clock, or 6;30 that night, and I waked up to my mother's at 92 Tatnall St. and they give me a lunch up there and I brought it on back home and I stayed there and eat it up and stayed at home until 10 minutes to 7 the next morning, and when I got to the corner of Forsyth and Mitchell St. the W. & A. blowed for 7 o'clock, and then I went running on to the factory, and it was 4 or 5 minutes after 7 o'clock, the clock may have been a little fast, and when I got there I went upstairs to the dressing room and in comes Gordon Bailey,and here comes Joe Williams and then Mr. Wade Campbell,the lead inspector, and he comes in there and says "wasn't it bad about that girl being killed",and we asked him "which girl" and it seemed like he said "Mary Puckett", and we asked him whereabouts and he said "in the basement"and we asked him if it was a white or colored girl" and he said "it was a white girl" and we told him "yes it was" and we asked him how she got killed and he said he didn't know,and then he come on out the door first and I come right behind him with the sprinkler in my hand, and then he went to the toilet and I went right behind him and got a sprinkler full of water and I stayed down the isle until about 9 o'clock, and I went and got my raw stuff on the 3rd floor and brought it up to the 4th floor and unloaded it, and then I said I would go to the basement and see who that was that got killed,and when I got there there was such a crowd of white people there I couldn't go back there, and then the fireman sent me to get him a nickle's worth of onions and a loaf of bread, and then here comes Gordon and he give me a nickle and the fireman give me a nickle and told me to get them a dime's worth of beer and I got it and we all drank it. I went back upstairs and stayed up there until about 15 minutes to 10, and the whistle blowed for the factory to shut down,and I hang

tomorrow,and I went and changed shoes and pulled off the pants and put on my hat and come down at 10 minutes to 10, and didn't go back any more until Tuesday morning and went to work at Tuesday morning and got through with my work and went downstairs about half past 9 and there was ~~x~~ such a crowd down there I didn't stay long,and I come back up the isle and went to taking up some trash and about half past 10 or 11 o'clock,Mr.Frank come back up the isle and leaned over to me and said "Jim be a good boy" and I said "yes sir,I am Mr.Frank" and when I heard from Mr. Frank again he was arrested.

I come to work Wednesday morning and started down to the basement and there was such a crowd down there I couldn't get to use the toilet, and I goes back upstairs and finished my work and works all that day ,and Thursday morning I come to work and got caught up by 10 o'clock,and I went downstairs and the fireman and another colored fellow was down there and I asked the fireman where was that they say the young lady got killed at,and he told me right around there,and I took a little piece of paper and went around there to see if I could see, but I couldn't see where anybody had been laying at, and I come on back and found he was throwing some stuff into the furnace, and I went on upstairs and stayed there until 25 minutes to 12, and the detectives were giving us all subpoenaes and I got my subpoena and went back upstairs and stayed up there until 5 minutes to 12, and I come down and went out in the streets and heard the whistle when it blowed for ~~12~~ o'clock, and I went back and started to cleaning up at half past 12 and got through cleaning at half past one. Then I went down to wash my shirt so I could have a clean one to wear to court for I had been wearning this one for three weeks and when I got back there and pulled off my shirt and washed it, then here comes Mr.Quinn and I asked him where was the dry house and he showed me where it was, and he told me, he said "Jim,there aint no steam in there now" and I said to myself I will have to hang this on the steam pipe to get it dry, and by me hanging it on there I got a little rust on it, and some of them saw me back there washing my shirt and called up the detectives and when the detectives come up there I had done put on my shirt and they asked me where was the shirt I was washing and I told them this here was the shirt, and they said yes because it is not good dry, and then told me to come and go with them and I did. They brought me down here and found there was no blood on the shirt, and give me my shirt back and that's all I know.

(signed) James Conley

Sworn to and subscribed before me
this the 29th day of May, 1913.

M C. February (Signed)
Notary Public, Fulton County,Ga.

DEFENDANT'S EXHIBIT 39.

CONLEY'S STATEMENT OF MAY 29,1913.

Atlanta,Ga., May 29,1913.

On Saturday, April 26,1913, when I come back to the pencil factory with Mr.Frank, I waited for him downstairs like he told me, and when he whistled for me I went upstairs and he asked me if I wanted to make some money right quick and I told him yes sir, and he told methat he had picked up a girl back there and had let her fall and that her head hit against something, he didn't know what it was, and for me to move her; and I hollered and told him the girl was dead, and he told me to pick her up and bring her to

with and he told me to go and look by the bottom box there and

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get a piece of cloth, and I got a big wide piece of cloth and come back there to the men's toilet where she was, and I tied her up, and I taken her and brought her up there to a little dressing room, carrying her on my right shoulder, and she got too heavy for me and she slipped off my shoulder and fell on the floor right there at the dressing room and I hollered for Mr.Frank to come there and help me, that she was too heavy forme, and Mr. Frank come down there and told me to pick her up, damn fool, and he run down there to me and he was ~~sxxix~~ excited, and he picked her up by the feet, her head and feet were sticking out of the cloth and then we brought her on to the elevator, Mr.Frank carrying her by the feet and me by the shoulders, and we brought her to the elevator and then Mr.Frank says "Wait, let me get the key", and ~~he~~ went into the office and got the key and come back and unlocked the elevator door and started the elevator down. Mr. Frank turned it on himself and we went on down to the basement and Mr.Frank helped me to take it off the elevator and he told me to take it back there to the sawdust pile, and I picked it up and put it on my shoulder again, and Mr.Frank,he went up the ladder and watched the trap door to see if anybody was coming, and I taken her back there and taken the cloth from around her and taken her hat and show which I had picked up upstairs right where her body was lying, and brought them down and untied the cloth and brought them back and throwed them on the trashpile in front of the furnace, and Mr.Frank was standing at the trap door at the head of the ladder. He didn't tell me where to put the things. I layed her body down with her head towards the elevator, lying on her stomach and the left side of her face was on the ground and the right side of her face was up, and both arms were laying down with her body, by the side of her body. Mr. Frank joined me back on the first floor, I stepped on the elevator and he stepped on the elevator when it got to where he was, and he said "gee that was a tiresome job" and I told him his job was not as tiresome as mine was, because I had to tote it all the way from where she was lying to the dressing room, and in the basement from the elevator to where I left her. Then Mr. Frank hops off the elevator before it gets even with the second floor and he makes a stumble and he hits the floor and ~~watches~~ with both hands,and he went on around to the sink to wash his hands, and I went and cut off the motor, and I stood and waited for Mr.Frank to come from around there washing his hands, and then we went on into the office, and Mr.Frank he couldn't hardly keep still, he was all the time moving about from one office to the other, then he come back into the stenographers office and come back and he told me "here comes Emma Clark and Corinthia Hall I understood him to say, and he come back and told me to come here and he opened the wardrobe and told me to get in there, and I was so slow about going he told me to hurry up, damn it, and Mr.Frank,whoever that was come in the office, they didn't stay so very long,till Mr. Frank was gone about 7 or 8 minutes, and I was still in the wardrobe and ~~he never~~ had come to let me out, and Mr.Frank come back and I said "goodness alive you kept me in there a mighty long time" and he said "yes, I see I did", you are sweating" and then me and Mr.Frank set down in a chair. Mr. Frank then took out a cigarette and he give me the box and asked me did I want to smoke and I told him yes sir, and I taken the box and taken out a cigarette and he handed me a box of matches and I handed him the matches back, and I handed him the cigarette box and he told me that was all right,I could keep that, and I told him he had some money in it and he told me that was all right, I could keep that, and Mr. Frank then asked me to write a few lines on that paper, a white scratch pad he had there, and he told me what to put on there, and I asked him what he was going to do with it and he told meto just go ahead and write, and then after I got through writing Mr. Frank looked at it and said it was all right, and Mr. Frank looked up at the top of the house and said "why should I hang, I have wealthy people in Brooklyn," and I asked him what about me, and he told me that was all right ah out me, for me to keep my mouth

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where was the money he said he was going to give me and Mr.Frank said"here, here is ~~the~~ two hundred dollars," and he handed me a big roll of green back money and I didn't count it,I stood there a little while looking at it in my hand, and I told Mr. Frank not to take another dollar for that watchman I owed and he said he wouldn't - and the rest is just like I have told it before.

The reason I have not told this before is I thought Mr.Frank would get out and help me out, but it seems that he is ~~not~~ going to get out and I have decided to ~~xxxx~~ tell the whole truth about this matter.

While I was looking at the money in my hands, Mr.Frank said "let me have that and I will make it all right with you Monday if I live and nothing happens,"and he took the money back and I asked him if that was the way he done and he said he would give it back Monday.

(Signed) James Conley.

Sworn to and subscribed before me
this 29th day of May, 1913.

(Signed) G. C. February,
Notary Public, Fulton County,Ga.

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DEFENDANT'S EXHIBIT 40.

Cash book of the National Pencil Company, page 197 of which contains the following entries, in Frank's handwriting:

Page 196 — Cash

1913		Dr.
To balance		39.85
4/22	To check	15.00
4/24		15.00
		69.85

page 197 — cash

1913		Cr.
By	kerosene	.15
"	type	.75
"	Dray	6170
"	cases	10.50
"	express	1.10
"	postage	1.00
"	Parcel post	.16
"	2 wks rent typewriter	2.00
"	Supplies, Schneegass	.45
"	King Hdw. Co.	.85
"	Tin smith	11.50
"	thread	.05
"	carfare	.10
"	Herbert Wright	4.00
omitted from payroll		39.31
Balance to fwd.		30.54
		69.85

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DEFENDANT'S EXHIBIT 4A.

Cash book items made out by Frank to balance same.

Kerosene	.15	.15
Type	.75	.75
Dray	2.00	
	1.70	
	1.00	
	2.00	
	6.70	6.70
cases	2.50	
	1.25	
	3.50	
	1.75	
	1.50	
	10.50	10.50
Express	.35 & .75	
Postage	.50 & .50	1.10
Parcel post	.03 &.13	
Rent Typer.	2.-2 wks	1.00
Supplies.	45-Schn.	
King Hdw.Co.	.85	116
Tinsmith	11.50	2.00
Thread	.05	.45
Carfare	.10	.85
Herbert Wright	4.00	11.50
		.05
		.10
	39.85	4.00
	30.00	39.31
	69.85	
	30.31	
	30.54	

Cash box $4.34 short
O.K. F-A/26/13

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DEFENDANT'S EXHIBIT 42.

Letter written by Leo M.Frank to Mr.Moses Frank. The letter was not typewritten, but was in long hand, and was as follows:

SLAT MILL,
OAKLAND CITY, GA.

NATIONAL PENCIL COMPANY.

OFFICE AND FACTORY.
37-41 S. FORSYTH ST.

LEAD MILL,
BELL ST. & SOU. R.R.

ATLANTA, GA., April 26, 1913.

Dear Uncle:

I trust that this finds you and dear Tanta well after arriving safely in New York. I hope that you found all the dear ones well in Brooklyn, and I wait a letter from you telling me how you find things there. Lucille and I are well.

It is too short a time since you left for anything startling to have developed down here. The Opera has Atlanta in its grip, but that ends to-day. I've heard a rumor that Opera will not be given again in a hurry here.

To day was "Yondef" here, and the thin gray line of veterans, smaller each year, braved the rather chilly weather to do honor to their fallen comrades.

Enclosed you will find last weeks report. The shipments still keep up well, tho' the result is not what one would wish. There is nothing new in the factory etc. to report. Enclosed please find the price list you desired.

The next letter from me, you should get on board ship. After that I will write to the address you gave me, in Frankfurt.

With much love to you both, in which Lucille, joins me, I am,

Your affectionate nephew,
(Signed) Leo M. Frank.

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DEFENDANT'S EXHIBIT 43.

Weekly report forwarded to Moses Frank by Leo M. Frank, enclosed in Leo M. Frank's letter to Moses Frank, as set forth in Exhibit "42", said report being in Frank's handwriting, same being folded to the same size as envelope set forth in Exhibit "44" herein.

FINANCIAL.

Week ending April 24, 1913.

Production: Net	2719⅓	
Good	700	Gr.
Medium	629⅔	Gr.
Cheap	599	Gr.
Jobs	791	Gr.

29%

Net Value Prod'n	$3066.31
Total Expenditures	3175.75
Result-Deficit	109.44

Shipments

$5438.78
4374 gr.

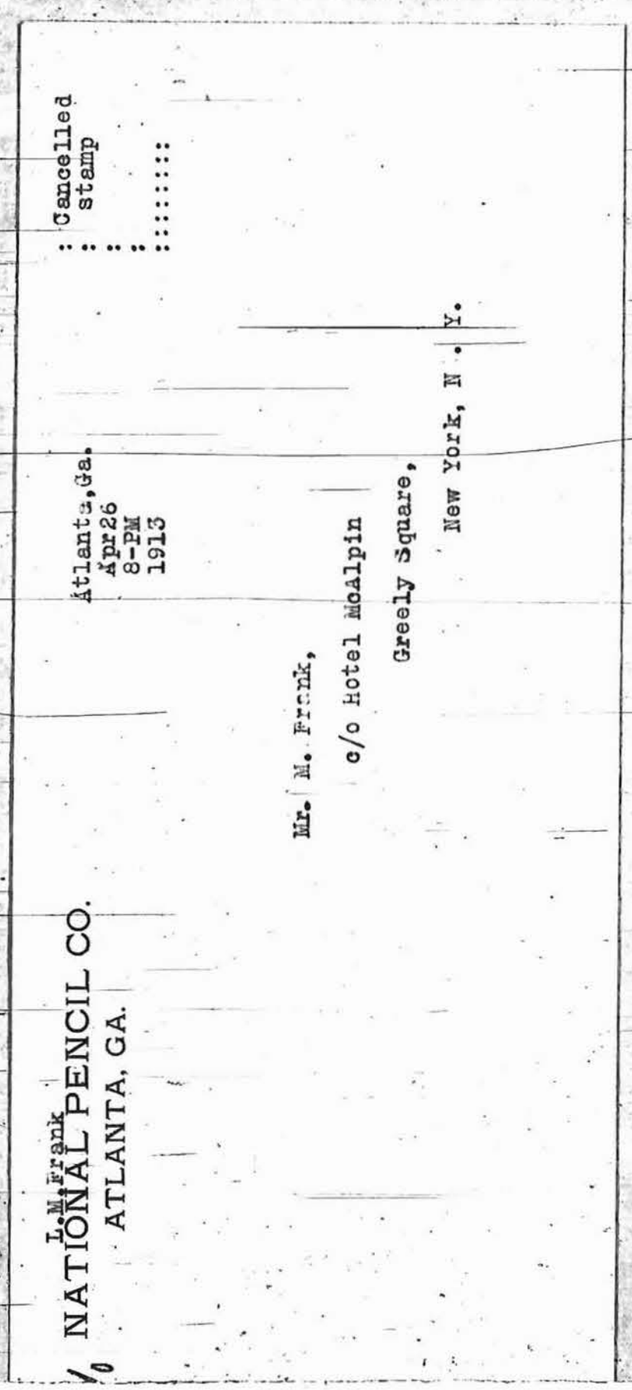
Orders received	$3320.31	Value
	1904	Gross

O.K. - F

x26

DEFENDANT'S EXHIBIT 44/

Envelope in which Leo M. Frank's letter (exhibit 42) to Moses Frank and weekly report (exhibit 43) was enclosed, the address on said envelope being in Leo M. Frank's handwriting.



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DEFENDANT'S EXHIBIT 45.

Weekly report sent by Leo M. Frank to Oscar Rappenheimer and received by the latter on April 28, 1913, said report being in the handwriting of Frank.

FINANCIAL.

Week ending April 24, 1913.

Production:-	Net	2719½	Gr.
	Good	700	Gr.
	Medium	629½	Gr.
	Cheap	599	Gr.
	Jobs	791	Gr.

29%

Net Value Prod'n	$3066.31
Total expenditures	3175.75
Result- Deficit	109.44

Shipments
$5438.78
4374, Gr.

Orders received	$3320.31	Value
	1904	Gross

O.K.- F

DEFENDANT'S EXHIBIT 46.

Weekly financial reports of the business of the National Pencil Company sent by Leo M. Frank to Oscar Pappenheimer, for each week beginning January 18, 1912 and ending with the week ending April 24, 1913, each of said reports being identical in form with the defendant's exhibit "45" and being in the handwriting of Leo M. Frank.

DEFENDANT'S EXHIBIT 47.

Pay envelope found by detective McWorth. It is an ordinary pay envelope used by the Pencil Company with the number "186" written thereon, with the first initials of a name on it, an "M" and a "p".

DEFENDANT'S EXHIBIT 48.

Club found by detective McWorth at the factory. The club is round, about three feet long and three inches in diameter, weighs approximately three pounds and has several red blotches thereon.

DEFENDANT'S EXHIBIT 49.

Brown suit of clothes worn by Leo M. Frank on April 26, 1913. Consists of coat, pants, and vest. Suit does not appear to be new, but is clean and unspotted.

DEFENDANT'S EXHIBIT 50.

Bank book showing account of Leo M. Frank with Atlanta National Bank. Shows balance on April 1,1913, of $111.13,and a deposit of $15. on April 18. It further shows that the sum of $109.85 had been drawn out on checks (defendant's exhibit 51), leaving a balance to the credit of depositor of $16.28.

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DEFENDANT'S EXHIBIT 51.

Twelve cancelled checks drawn on the Atlanta National Bank, signed by Leo M. Frank as follows:

No.	Date	Amount	Payee	Endorsements
450	4/1/13	$20.00	Mrs.L.M.Frank	Mrs.L.M.Frank Chamberlain-Johnson-DuBose Co.
451	4/1/13	1.50	West View Floral Co.	West View Floral Co.
452	4/1/13	12.34	Haas & Company	Haas & Company
453-A	4/9/13	32.50	Rivers Realty Co.	Rivers Realty Co. American Natl.Bank
453-B	4/9/13	8.00	Mrs.E.Selig	Mrs.E.Selig D.S.Schols Co. Travelers Bank & Tr.Co.
454	4/6/13	4.75	S.M.Truitt & Son	S.M.Truitt & Son
455	4/21/13	7.50	Alex Dittler,Secy	Alex Dittler,Secy Dittler Bros. Fourth Natl.Bank
456	4/2/13	6.26	Guthman Ldry Co.	Guthman Laundry & D.Ml.Co.
457	4/2/13	2.00	Maier & Berkele	Maier & Berkele
458	4/9/13	5.00	Self	Leo M.Frank
459	4/15/13	5.00	Self	Leo M. Frank
460	4/24/13	5.00	Self	Leo M. Frank

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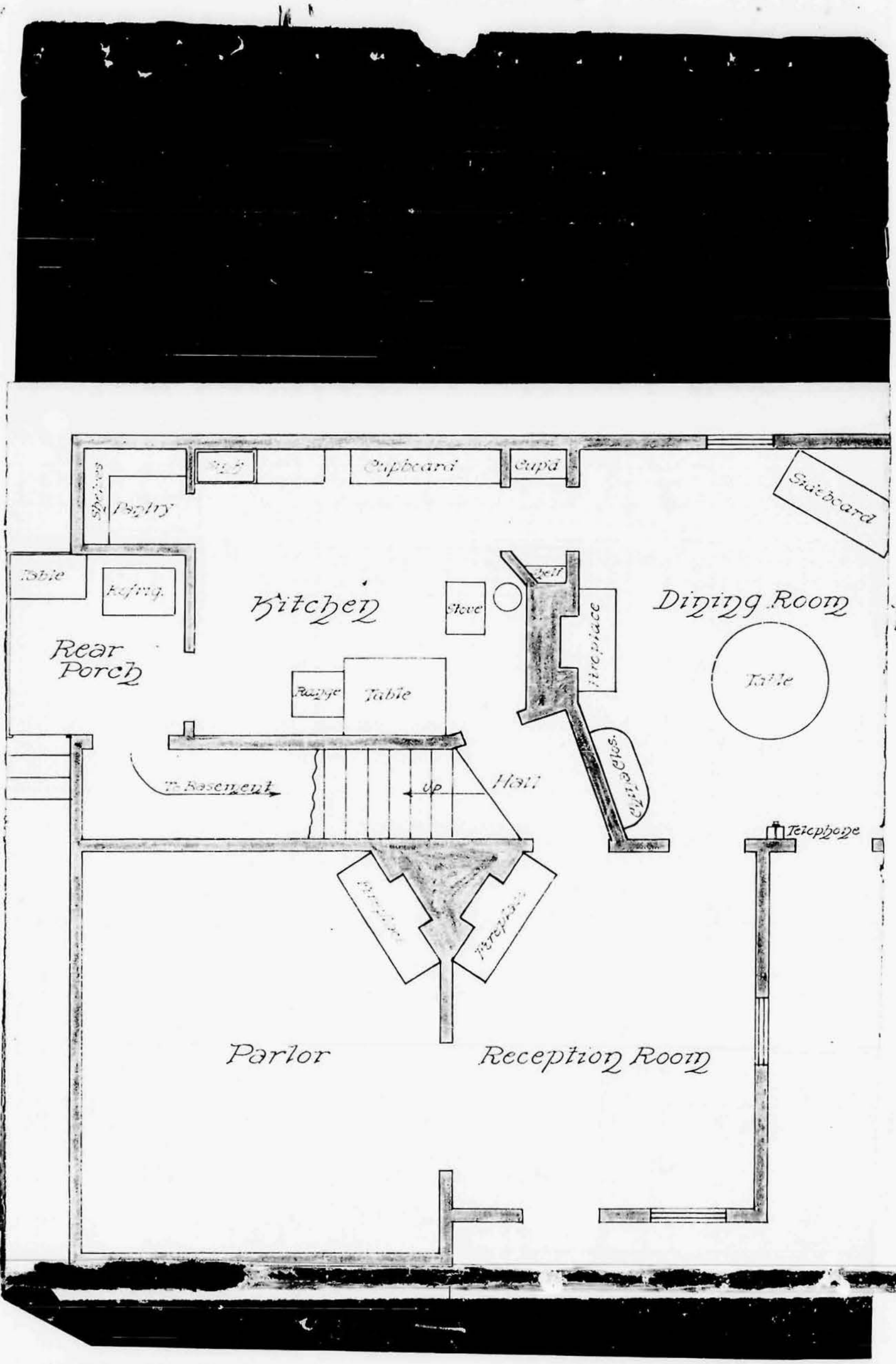
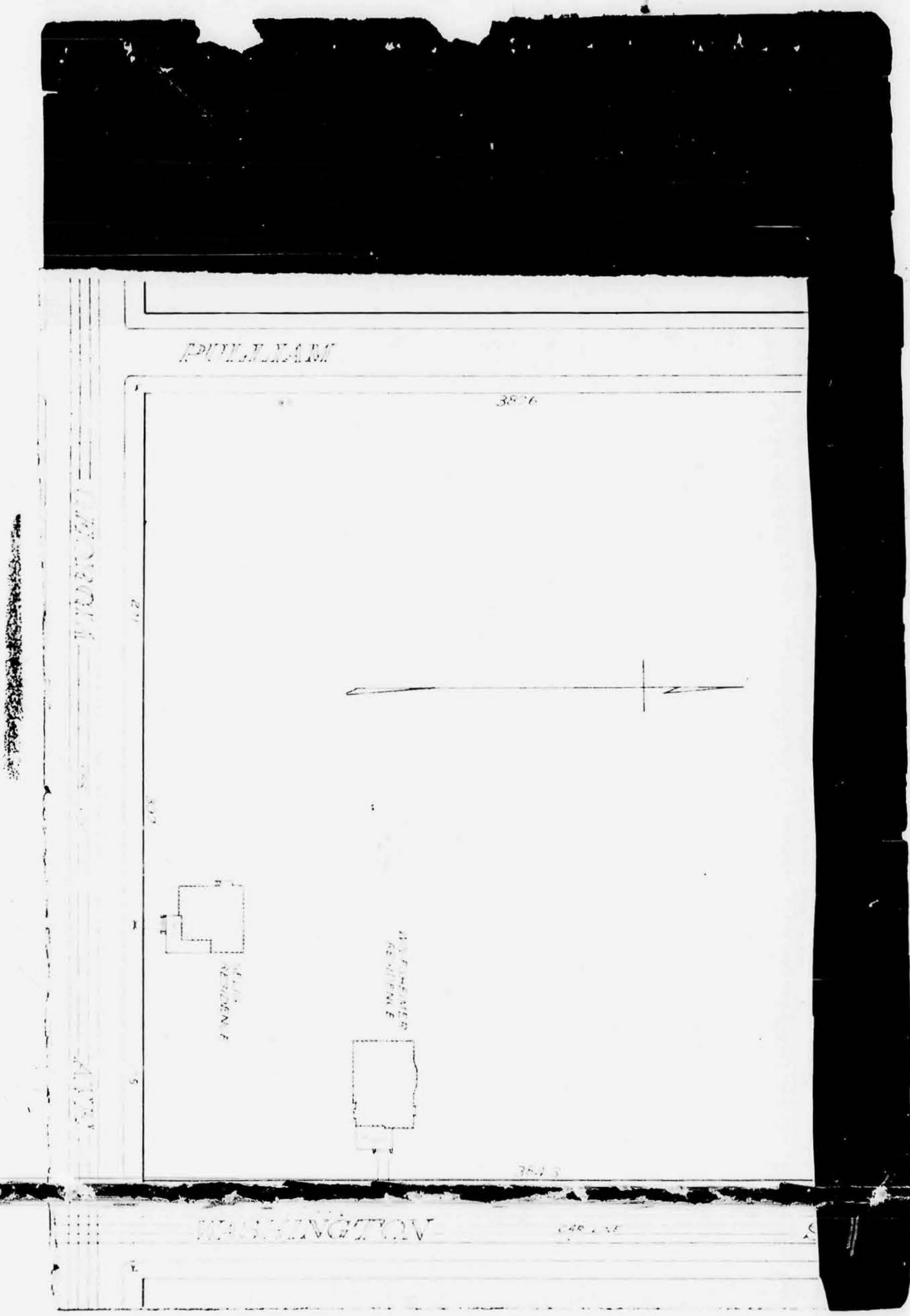

Cupboard
Cupd
Sideboard
Pantry
Bible
Kitchen
Stove
Bell
Dining Room
Fireplace
Table
Rear Porch
Range
Table
To Basement
Up
Hall
Chandelier
Telephone
Parlor
Reception Room

000776



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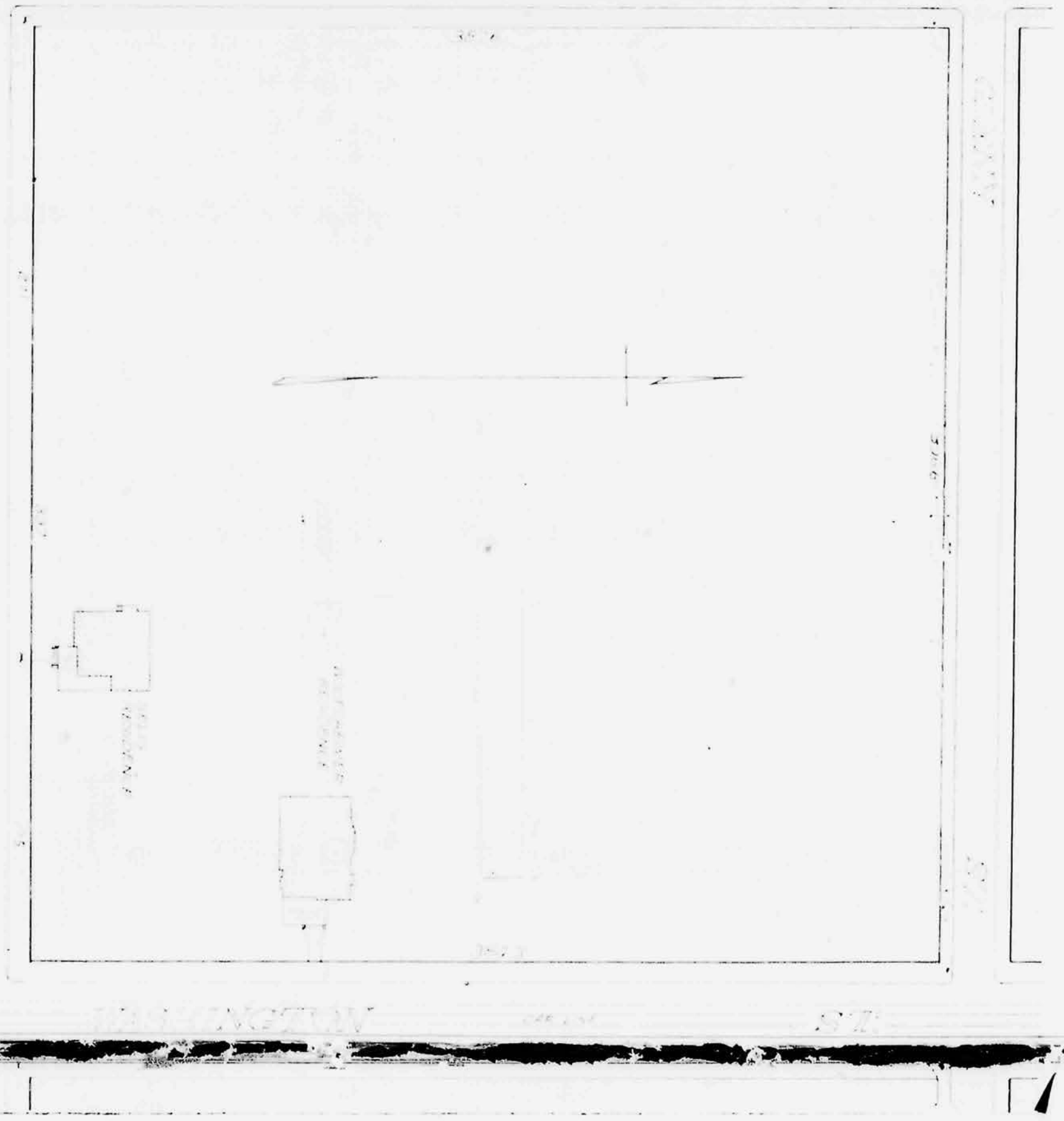
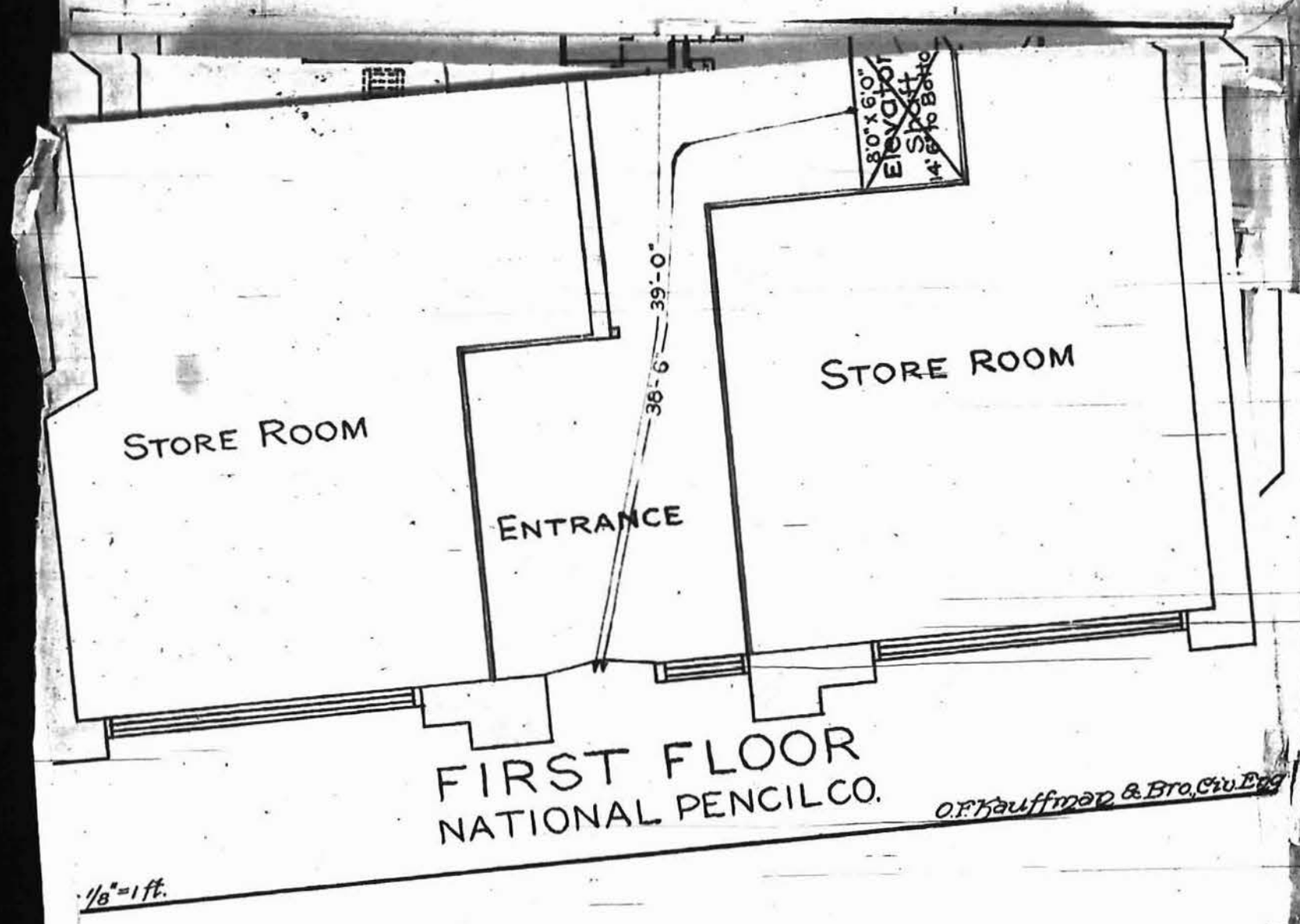
[redacted]



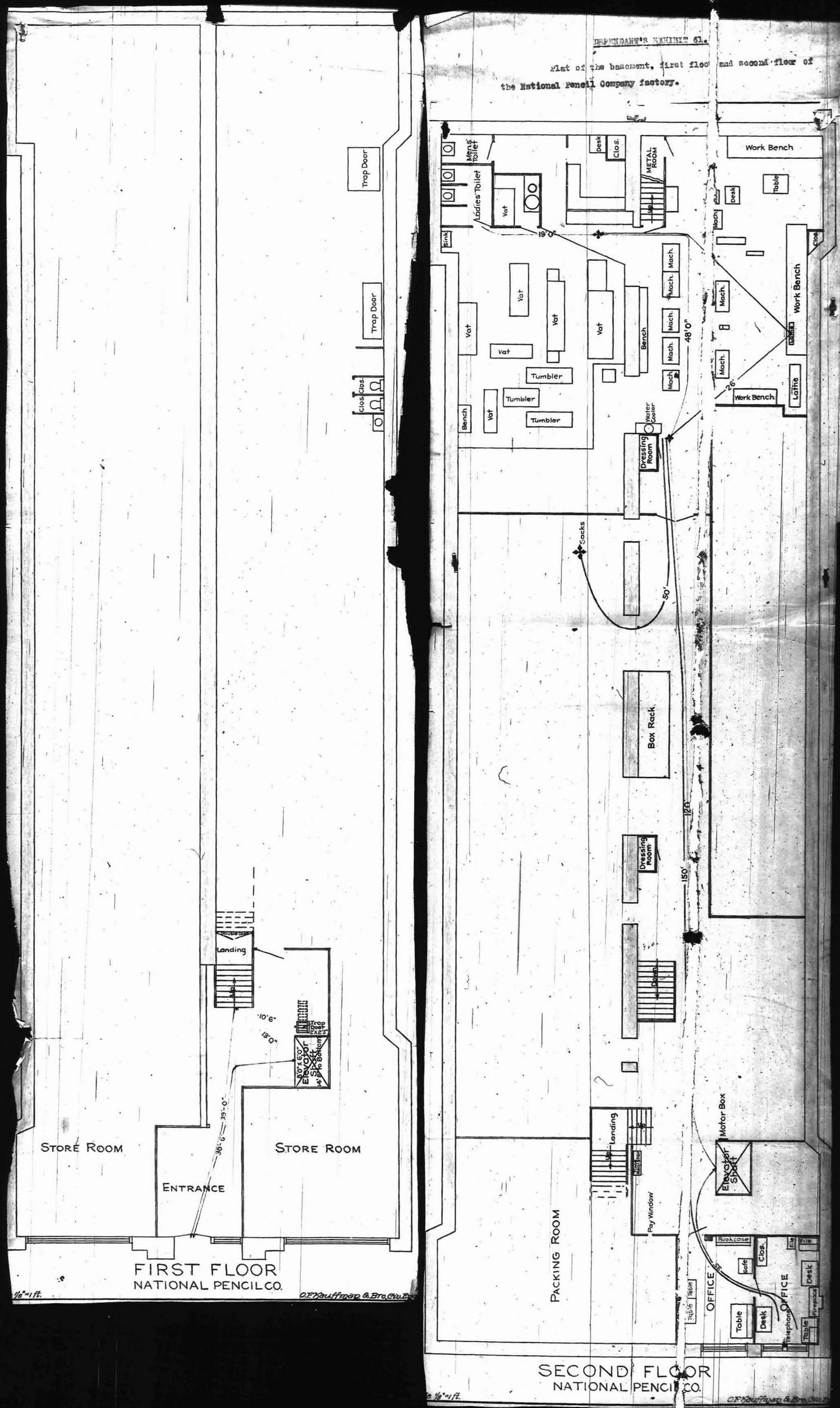
DEFENDANT'S EXHIBIT 61.

Plat of the basement, first floor and second floor of the National Pencil Company factory.



DEFENDANT'S EXHIBIT 61.

Plat of the basement, first floor and second floor of the National Pencil Company factory.

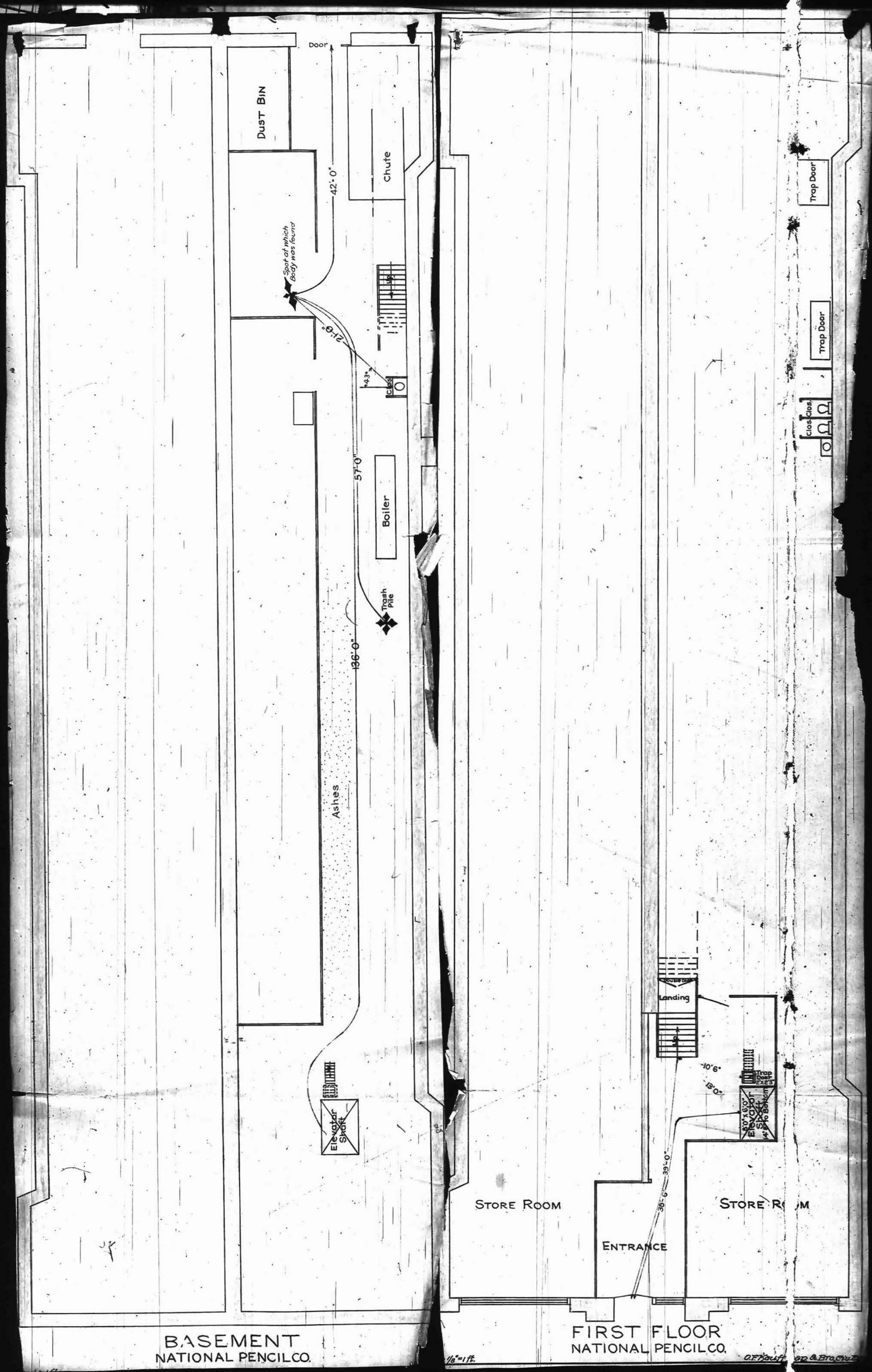


FIRST FLOOR
NATIONAL PENCIL CO.

1/8"=1ft. O.F. Kauffman & Bro. Civ. Eng.

SECOND FLOOR
NATIONAL PENCIL CO.

1/8"=1ft. O.F. Kauffman & Bro. Civ. Eng.



BASEMENT
NATIONAL PENCIL CO.

1/8"=1ft.

FIRST FLOOR
NATIONAL PENCIL CO.

O.F. Kauffman & Bro. Civil

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DEFENDANT'S EXHIBIT 62.

Picture of the Selig home taken from the outside of the back door of the kitchen. It shows the entire kitchen and also the door leading into the dining room. It shows nothing else in the dining room.

DEFENDANT'S EXHIBIT 63.

Picture of Selig home taken standing directly inside the back door of kitchen. Shows practically same view as last picture but shows no view at all of the dining room.

DEFENDANT'S EXHIBIT 64.

Picture of the safe with open door standing in outer office of the National Pencil Company.

DEFENDANT'S EXHIBIT 65.

Picture of the outer office of the National Pencil Company factory, showing the safe with the door wide open. Picture shows safe door shutting off any view into the inner office and shows no view of anything in the inner office.

DEFENDANT'S EXHIBIT 66.

Picture taken on the outside of the outer office looking toward the inner office with the safe door open. It shows no view at all into the inner office.

DEFENDANT'S EXHIBIT 67/

Picture showing the pay window in the office of the National Pencil Company factory.

DEFENDANT'S EXHIBIT 68.

Picture showing foot of elevator shaft in the basement of the National Pencil Company factory. Shows rubbish and trash in elevator shaft and barrels adjacent thereto.

DEFENDANT'S EXHIBIT 69.

Picture of basement of National Pencil Co. factory, looking from the elevator shaft to the back door.

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DEFENDANT'S EXHIBIT 70.

Picture of the corner in the basement where body was found, around the left corner behind the partition shown on the picture.

DEFENDANT'S EXHIBIT 71.

Picture showing passage way leading to the back door in the basement of the factory. Picture shows boxes piled up on each side of the passage way to the height of the ceiling.

DEFENDANT'S EXHIBIT 72.

Picture showing entrance to the factory from the street. Shows the partition on the right immediately entering the factory, behind which is the elevator. The steps leading to the second floor of the factory are shown in the background.

DEFENDANT'S EXHIBIT 73.

Picture showing elevator shaft and trap door on the ground floor of the factory. Shows steps leading to the second floor on the left of the picture.

DEFENDANT'S EXHIBIT 74.

Picture of metal room, showing place where Conley claims to have found body.

DEFENDANT'S EXHIBIT 75.

Picture showing place where cotton sacks were kept.

DEFENDANT'S EXHIBIT 76.

Picture of the plating room.

DEFENDANT'S EXHIBIT 77.

Picture of the metal room, showing where the floor was chipped up by the detectives in front of dressing room.

DEFENDANT'S EXHIBIT 78.

Picture showing lathe where Barrett claims to have found hair.

DEFENDANT'S EXHIBIT 79.

Picture showing view from ~~third~~ second floor looking down steps to second floor. Picture shows man walking on second floor from the metal room toward the elevator.

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DEFENDANT'S EXHIBIT 80.

Picture showing elevator box on the office floor.

DEFENDANT'S EXHIBIT 81.

Picture showing elevator wheel at the top of the fourth floor.

DEFENDANT'S EXHIBITS 82,83, 84.

Pictures showing view of the metal room on the second floor. Pictures show doors of the metal room to be partly made of transparent glass.

DEFENDANT'S EXHIBITS85 and 86.

Pictures of the metal room closet with the door open and closed.

DEFENDANT'S EXHIBIT 87.

Blue print from which the model of the factory (defendant's exhibit 13) was made.

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DEFENDANT'S EXHIBIT 88a,b,c,d,e

Five jars containing contents of stomach taken from different parties who had eaten cabbage and bread.

DEFENDANT'S EXHIBIT 89.

Extract from the minutes of Walton Superior Court showing three indictments for larceny from the house against C. B. Dalton, at the April Term,1894 of said court. Pleas of guilty in each indictment and a fine of $50. and twelve months in the chain gang sentence in each case. Also indictment of C. B. Dalton, atthe February Term,1899 of Walton Superior Court for stealing bale of cotton. Plea of not guilty, and verdict of jury finding defendant guilty, recommending punishment as for misdemeanor. Fine of $20.00 and six months in chain gang.

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DEFENDANT'S EXHIBIT 90.

Testimony ofNewt Lee before the Coroner's inquest as follows:

"He (Mr.Gantt) says "I would like to have them(shoes) because I got to go to work Monday.' I says I can't let you in there unless Mr.Frank says so. He says 'Is Mr.Frank there?' I says, yes if you want me I will go up and ask him. By that time Mr.Frank comes down and runs right into Mr.Gantt,standing in the front door and he looked like he was frightened. I saw Mr.Frank was frightened,but I taken it this way, he and Mr.Gantt had fell out and he discharged Mr.Gantt and ~~hm~~ I thought that he thought by him hanging around there that he was waiting for him and had come to do him some harm. Mr. Gantt said I got some old shoes up there and I would like to get them. Mr.Frank looked at him and said what sort were they, and he said they were tans . I says, I think I sees a boy sweep them up in the trash. He says I have some black ones up there too. Well, I says I don't know anything about any black shoes, then Mr.Gantt says I can go up there and see if I can find them, then he drops his head and looked right at me. Then Mr. Frank says, 'Newt you carry him up there, go with him around and stay with him while he is up there' and so we went in and went on up there and found the shoes like he ~~xy~~ says and then he asked me for some paper to wrap them up and I gave him some paper,and then I got him some twine... . . . . .

I don't know when I ever seen him change that (time slip) before. He's put the tape in once before; it was one night. I never paid no attention to how long it tookhim. I didn't take him five minutes. I couldn't tell whether it took him a minutes or not. On Saturday night, it took him a pretty good little bit, because he spoke about it. He says 'It's kind of hard to get in."

DEFENDANT'S EXHIBIT 91.

Harry Scott's testimony before Coroner's inquest as follows:

"He just told me that he had been down at the police barracks Monday morning and he talked to John Black, and John Black seemed to suspect me of the crime,' and he then repeated to me his movements on the day of the murder, that is on Saturday, he reported at the office, I believe he said, at around eight o'clock in the morning, stayed there up until ten o'clock, then he went to Montag Brothers; Mr.Darley accompanied him down the street a little ways, and he continued on to Montag Bros. by himself, and returned to the factory,I believe, at 10;30, that Arthur White and Harry Denham were employed on the 4th floor of the factory, working during the morning hours, and about 12;10, this little girl, Mary Phagan, came into the office to draw her salary which he gave her ($1.20). The nominations,which he thought, were two half dollars and two dimes, and that Mary Phagan, left his private office where he paid her off, and went into the bookkee-er's office, and when she got hear the door, she turned to him, and said, "Has the metal come yet?' And Mr.Frank replied 'NO' . Then he stated that Mary Phgan went on out, and it was about 12;50 that he went upstairs to the 4th floor, where Denham and White were working and saw Mrs. White up there talking to her husband. He made the remark that he intended closing and locking the doors, and asked Mr.White if she would leave, and also asked the men up there how near they were through with their work. They told him they didn't think they could finish up right soon at that time, and he came on downstairs, and told them he was going to lock the doors, when he went out. He stated that he left the factory about 1;10 P.M., went home to his dinner, returned to the factory then about 3 o'clock , and White and Denham were still on the 4th floor, He did not meet anyone going out or coming in. About 3;10 both White and Denham left the building; that Newt Lee reported to him about four o'clock, as he had instructed him to do on the day previous, that it was his intention to go to the ball game that afternoon, and when Newt Lee

(Defendant's EXHIBIT 91 (cont'd)

came there, he told him that it would not be necessary for him to to to work just at that particular hour, that he could go out on the street and enjoy himself for a few hours, and return about six o'clock. Frank stayed in the building from four to six and Newt Lee returned at 6 o'cloc, went on duty and Frank left the building at about 6;15. On his way out he saw Newt Lee sitting on a packing box outside the door of the factory talking to a man by the name of Gantt. Lee told Frank what Gantt was staying there for, and after considering allowed Gantt to come upstairs for a pair of shoes, that is go up inside of the factory, but he instructed Newt Lee to stay with Gantt while he was up inside of the factory, until he left, which he said that Lee did. Frank then continued on to his home, and said that he became worried about Gantt's presence in the building, knowing that he had discharged him for some kind of fault. He continued to worry about Gantt's presence in the building and therefore called up Newt Lee on the telephone at 7;30, as he knew it was that time for Lee to punch the clock at that hour, and he would hear the telephone ringing inside of the office while he was there at the clock; although I am not sure, I think he said he made an effort to get Lee at seven o'clock and failed and finally got him at 7;30. When he called Lee on the telephone, he inquired if Gantt had left the building. Lee replied, 'Yes;' Frank then asked him if everything else was all right, to which Lee replied 'Yes', and he hung up the receiver and at about 9 that night he retired to go to bed; and I believe now that that's the extent of my interview with Mr.Frank. .....

"Yes, I am working in the interest of the National Pencil Co . . to ferret out who is responsible for the murder. Mr. Black and I requested Mr.Frank that he go into this private room with Lee, and endeavor to get any information that he might be withholding from either of us or the detective department, and told Mr. Frank to impress upon Lee the importance of telling the whole truth in the matter, and do whatever he could to persuade Lee to tell the absolute truth in the matter. Mr. Frank said he understood, and we sent him in to talk to Lee. I have no way of knowing what Frank said; they were both together privately in the room there, and we had no way of knowing except what Lee told us afterwards."

DEFENDANT'S EXHIBIT 92.

Harry Scott's report to the Pinkerton Agency, as follows:

"Mr.Frank stated that on Saturday, April 26th, 1913, the factory of the National Pencil Company was closed down, and that only two of the employees reported for work the entire day, and these men were Harry Denham and J.A.White, who are employed on the 4th floor of the building. Mr.Frank stated that he was in the office up until about 1 P.M. and that at 12;10 P.M., a girl employee of the factory, named Mary Phagan, called at the office of Mr.Frank for her wages, and she received $1.20, either in a one dollar bill and two dimes, or two half dollars and two dimes. Mr.Frank personally handed this girl her wages, after which the Phagan girl left Mr. Frank's office and walked towards the door of the office adjoining Mr.Frank's office, which door leads into the factory. Miss Phagan turned to Mr.Frank and asked him if the metal had arrived yet, to which Mr. Frank replied 'No' and the girl then went on away out of the factory, as far as Mr.Frank knows, as he did not see anything of her during the afternoon. About 12 o'clock, noon, Mrs. J.A. White entered the factory and went to the top floor where her husband, J.A.White was working, and at 12;45 P.M., Mr. Frank went to the 4th floor and in the presence of Mrs.White told Denham and White that he was going to lock the doors, and Mrs.White then left the factory, but White and Denham informed Mr.Frank that they had not finished their work and Mr. Frank then told them to remain until

Defendant's exhibit 92 (Cont'd)

they had gotten through. Mr.Frank left the factory about 1 P.M. Saturday, while White and Denham were still on the top floor. Mr. Frank then went to his home, to his dinner, returning to the factory at 3 P.M., and he saw that white and Denham were about through with their work, and both of them left the factory at about 3:09 P.M. As far as Mr.Frank knows he was the only person left in the factory after that hour. On Friday, Mr.Frank had instructed his negro night watchman, Newt Lee, to report at the factory on Saturday at 4:00 P.M. on account of it being a holiday, and none of the employees working. At 4 P.M. the negro Newt Lee arrived at the factory, reporting for work to Mr.Frank who told him that it was not necessaryfor him to go to work at that that time, but that he could go out on the street and have a good time until about 6 P.M. and that in the meantime Mr.Frank would stay in the factory. The negro left the factory, returning again at 6 P.M. and at 6;05 P.m. Mr. Frank left the factory for his home and on his way out of the factory by the Forsyth Street door he saw the negro night watchman, Newt Lee, talking to a bookkeeper named John M. Gantt, who had recently been discharged by Mr.Frank, It developed that Gantt was asking the negro watchman, Newt Lee, to allow him to go to the second floor of the factory and secure a pair of shoes that he had left there, as he wanted to go to his home at Marietta, Georgia, and do some plowing and the negro, Newt Lee, then asked Mr. Frank if he would allow Gantt to enter the building. Mr. Frank knowing that he had discharged Gantt for thievery, hesitated about allowing Gantt to enter the building, but finally told the night watchman to let Gantt in, but to stay with him until he secured the shoes and then see that Gantt left the building without taking anything that belonged to him. About 7;30 P.M. Mr.Frank states he called up the factory, as he knew that Newt Lee, the night watchman was about to punch the clock at the hour and could hear the telephone bell ringing inside the office, and Newt Lee answered the telephone. Mr.Frank states that he inquired of Lee if Gantt had left the building, to which he replied in the affirmative. Mr. Frank then asked Lee if everything else was all right, to which Lee replied 'Yes'. Mr.Frank states that this was the extent of his telephone conversation with Lee."

DEFENDANT'S EXHIBIT 93~~6~~

Testimony of Policeman Anderson before Coroner's inquest, as follows:-

The watchman told me where he was ~~standing~~. He came out of the closet to fasten or button up his pants, and had his lantern sitting down right in front of him, where ~~he left~~ it when he went into the closet. While he was standing up there he saw that woman. He saw it from the closet, about twenty five feet , to where the object was. I could not see that far with the lantern that he had. With the lantern that he had I could see about ten or twelve feet, something like that."

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DEFENDANT'S EXHIBIT 94.

Court proceedings under which Jim Conley was released from Fulton County jail upon petition of Solicitor Hugh M. Dorsey:

"The State,) No.
(
vs.) In Fulton Superior Court, May Term, 1913.
(
Leo M. Frank.) Indictment for Murder.

The petition of Hugh M. Dorsey, Solicitor General of the Atlanta Circuit, including Fulton County, respectfully shows:

1.-

James Connally is a material witness for the State in the above stated case.

2.-

Petitioner is apprehensive that said Connally may not be forthcoming as a witness at the trial of the above named defendant, unless detained in custody.

3.-

Said Connally has been detained since May 1st, 1913, by the police authorities of the City of Atlanta, and is now in the custody of said officers, being detained by them as a witness. Since said Connally was taken into custody by said officers, Leo M. Frank has been indicted upon a charge of Murder.

4.-

Petitioner represents that the testimony of said ~~him~~ Connally may be, and likely will be very material in said cause.

~~5~~-

Wherefore, petitioner prays that said James Connally be committed to the jail of Fulton County, Georgia, there to be detained as a witness until said case above stated shall be terminated, or until said Connally shall be otherwise released by proper order of Court.
This May 29, 1913.

(Signed) Hugh M. Dorsey,
Sol. Gen. Atlanta Circuit.

Georgia, Fulton County.
Comes now Hugh M. Dorsey, who being duly sworn, deposes and says the allegations in the above petition are true so far as they come within his knowledge, and sofar as derived from the information of others he believes them to be true.

(Signed) Hugh M. Dorsey

Attested May 29, 1913.
John H. Jones, (Signed)
N.P. Fulton Co., Ga.

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The above and foregoing petition read and considered.
Let the said James Connally be taken into custody by the Sheriff of said County of Fulton, and be confined in the common jail pf said County, until discharged by further order of this court.

Let the said Connally be served with a copy of this order and the petition on which it is based. Bond for the release of said Connally may be assessed in a reasonable sum upon proper application to the Court and after reasonable notice in writing to the Solicitor General of the Circuit. It appearing to me that he does not object to this order, but consents to same.
This May 29 , 1913.

(Signed) L. S. Roan,
Judge S.C.Stone Mountain Circuit,
Presiding.

The State,) No. 9410
)
vs.) Indictment in Fulton Superior Court.
)
Leo M.Frank.) Murder. May Term, 1913.

It appearing to the Court that James Connally has heretofore been committed to the common jail of Fulton County to be held as a witness in the above stated case, and ~~to be released~~ only on a proper order of Court;

And it further appearing that the ends of justice require that said James Connally be released temporarily to the Chief of Police of the City of Atlanta;

It is therefore ordered that Sheriff C. W. Mangum, of Fulton County, Georgia, deliver the said James Connally to said Chief of Police, James L.Beavers, or his lawful deputy, to be received back into custody at said jail when delivered back by said Chief of Police, the attorney for James Connally consenting and not objecting to this order, and being present.
This May 31, 1913.

(Signed) L.S.Roan,
Judge S.C.Stone Mountain Circuit,
Presiding.

This is consented to by me
(Signed) William M.Smith,
Attorney for James Connally.

Georgia, Fulton County.
To Hon.L.S. Roan, Judge of the Stone Mountain Circuit,
Presiding in the Superior Court, Criminal Division:-
The petition of Hugh M.Dorsey, Solicitor General of the Atlanta Circuit, respectfully shows:-

1;-

On May 29,1913, this court, on petition of the above named Solicitor General, - representing that James Connally was a material witness for the State in the case of the State vs. Leo M.Frank, under indictment for Murder, and that said James Connally would probably not be forthcoming to respond to a subpoenae in said case, - ordered said James Connally held until further order of court as a witness in the above stated case, and to be confined in the county jail and subsequently upon petitioner's request made at the ~~instance~~ instance of sai Connally and his attorney, said Connally was allowed held by the police authorities of the City of Atlanta.

2.-

Petitioner is satisfied that the necessity for holding said James Connally under the orders heretofore granted on the aforesaid petition as a witness in said case no longer exists.

3.-

Wherefore, petitioner prays that the orders heretofore granted in said cause be revoked, and that said James Connally be discharged from custody under said orders.

(Signed) Hugh M.Dorsey,
Sol.Gen. Atlanta Circuit.

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Georgia,
Fulton County.

Read and considered, it is ordered that this petition and order be filed and duly served upon other claimed suspects in connection with the Phagan murder, and confined in common jail of said County, towit, Leo M. Frank and Newt Lee, both either personally or by serving their attorneys, and any other citizens of said County who may receive this notice by publication or otherwise, may show cause before me, Friday, the 13th day of June, at 10 o'clock A.M. at my chambers in Thrower Building, Atlanta, Ga. Notice to be served by the sheriff or one of his deputys by leaving a copy of this petition and order, at once.
June 11,1913 (Signed) L.S.Roan

Service acknowledged and further service waived. The confinement of said James Connally in the Police station was at my request and at the request of my client James Connally and I agree for said Connally to remain in custody of the police authorities until the trial of Leo M. Frank or until the indictment of said Connally. I agree to his confinement because he is a material witness for the State and I desire his confinement at the police station, because of repeated attempts on the part of visitors at the jail to torture and intimidate said James Connally and to safeguard said James Connally from perjured admissions, supposed to have been made by him, I waive his presence at the time of this trial.
This June 11, 1913. (Signed) Wm.M. Smith,
Attorney for James Connally.

Georgia, Fulton County.

Comes Newt Lee, by his attorney, Bernard L. Chappell, and in pursuance of an order made by L.S.Roan, Judge of the Superior Court, Criminal Division of said County, on the 11th day of June, 1913, hereby acknowledges service of said order as referred to the said Newt Lee, who is being held in the Fulton County common jail upon the order of Paul Donehoo, coroner of said county as a suspect in the Mary Phagan murder case.
June 12,1913.

(Signed) Bernard L.Chappell,
Attorney for Newt Lee.

Georgia, Fulton County.
I have this day served L.Z/Rosser, Atty for Leo M.Frank, personally with a copy of the within order.
This June 12,1913.

(Signed) T.A.Burdett,
Deputy Sheriff.

Georgia, Fulton County.
State of Georgia, No. ____ Fulton Superior Court.
vs. Criminal Division, Indictment for Murder.
Leo M.Frank.

And now comes James Conley, and in answer to the rule nisi issued in the above case, shows to the court as follows:
1. Respondent admits that he is now held in custody under orders of this Court, at the police prison of the City of Atlanta, having been originally held in the prison of Fulton County, also under order of this Court, the cause of said commitment by this Court of respondent, being the allegation that Respondent is a material witness in the above case, in behalf of the State, and it is desired to insure the presence of Respondent at the trial of the above case.
2. Respondent admits that he is now at the City police prison at his own request and instance, and through the advice and counsel of his attorney.

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3. Respondent shows to the court that the City police prison is so arranged and so officered, that Respondent is absolutely safe as to his physical welfare from any attack that might be made upon him; that he is so confined that his cell is a solitary one, there being no one else even located in the cell block with him; that the key to this cell block and the cell of Respondent is always in the possession of a sworn uniformed officer of the law; that under the instructions of Chief of Police Beavers, said sworn officers are not allowed to permit any one to approach this Respondent or come into his bell block, except the attorney of Respondent and such persons as this Respondent may agree to see and talk with; that Respondent so confined is protected from any physical harm and is protected from the possibility of legal harm by others who might seek to damn Respondent by false claims, as to statements alleged to be made by Respondent;

4. Respondent nor his counselmhave made no request for the release of Respondent or his transfer to any other place of confinement.

5. Respondent is willing to remain indefinitely as a prisoner in solitary confinement, under any reasonable rules this court may direct, subject to any further order or direction of this Court.

6. Respondent admits that he is a material witness in behalf of the State of Georgia in this case, and admits that in the exxxiexercise of sound discretion it is proper that Respondent be held until the final trial of this or any other case growing out of the unfortunate death of Miss Mary Phagan, but this Respondent denies that in the exercise of sound judicial discretion, it is necessary for this Court in order Respondent held at any particular prison.

7. Defendant denies that this Court has legal right in the exercise of sound judicial discretion to order this Respondent held as a witness in behalf of the State, when it is shown to this Court, as it is shown beyond peradventure of a doubt, that there is no possibility for this Respondent not to be present and subject to call as a witness in behalf of the State, since he is held in complete and perfect imprisonment, and there being no possible theory that the ends of justice will be thwarted, and all of these facts being without the slightest possible question, there is no reason for any order of this Court, committing Respondent.

8. Respondent is advised and believes that the Counsel for the Defendant in this case has been within the last few days studying the law very thoroughly bearing on the question of holding of this Respondent as a material witness in behalf of the State, at any other place than the County Prison, and also immediately finds a move on foot to have Respondent returned to the County prison, and this Respondent is advised by his Counsel that it is the belief of his Counsel that the idea of transfer back to the County Prison has under it, plans laid by persons unfriendly to the interests of thisn Respondent and friendly to the interests of the Defendant in this case.

9. Respondent denies that the law vests in this Court, the right of committal as a witness in behalf of either side, under the facts and circumstances of this or any other case.

10. Respondent shows that the condition of the County Jail are such that the interests of justice as far as this Respondent is concerned can not be well safeguarded and the interests of Respondent and the interest of justice are greatly threatened by the return of this Respondent to the County Jail.

11. Respondent shows that through no fault of the County Sheriff, a sufficient inside force of guards has not been provided by the County Authorities, only one man being paid by the County to guard twenty cell blocks distributed in twenty wings and over five floors; that it is a physical impossibility for this one man t keep up or even know what is transpiring on five different floors, or twenty separate immense wall and steel [illegible] through a large building; that with this inadequate [illegible] this respondent is advised the Sheriff of this County has com-

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plained about, it is an absolute impossibility for the best sheriff in the world or the best trained deputies to know exactly what it going on at any and all times or any reasonable part of the time; that the keys to practically all of the cell blocks are carried by "convicted criminals", known as "trusties". who turn in and out parties entering or leaving cell blocks, and while they have general instructions covering their duties, it is an impossibility for the inside deputy to know whether each is discharging his duty properly at all times; that the food is prepared and distributed in the County prison itself and practically by "convicted criminals" whose disregard for law and principle is written upon the criminal records of this State; that owing to this condition men have been known to saw through solid steel bars and cages and escape to freedom; that it would be easy for anyone to reach or harm Respondent or to poison him through his food; that the "trusty turnkeys" who are convicts xxx can easily swear as to admissions against the interest of this Respondent, even through such admissions might not be made; that the friends of the defendant in this case are allowed to pour constantly into the jail at all hours of the day and up to a late hour of the night, and are in close touch with many of these "trusty" turnkeys", and "trusty attaches" of the jail; that while a prisoner at the County Prison before his transfer to the City prison, a goodly number of people were admitted to the cell blocks to talk with Respondent, whose presence was not requested or desired; that among these visitors was one whom this Respondent has every reason to believe was working in the interest of the Defendant; that this party presented Respondent with sandwiches which this Respondent did not eat, that this same party also offered to present Respondent with whiskey; that Respondent was threatened with physical harm while in the County prison to the extent of the possibility of taking his life; that he was denounced as a liar, relative to his testimony in this case; and this Respondent is sure without the knowledge or through the neglect of the Sheriff or any of his men, but directly attirbutable to the construction physically of the county prison and the inadequate force allowed the Sheriff to oversee and care for it; that Respondent is advised and believes that one of the parties friendly to the Defendant is already priming himself to swear that Respondent made certain admissions while he was in the County prison, which this Respondent did not make, and which testimony will be false, but will be given, if given to help the defendant and damage this Respondent.

12. That this Respondent was imprisoned while in the County Prison directly over the cell block in which said Defendant is detained and was lodged among the most desperate criminals, one even being under sentence of death, and willing no doubt to swear or do anything necessary to help save or prolong his life; that these desperate criminals, with whom this Respondent was lodged, had this Respondent completely at their mercy and could swear that he admitted things most damaging, and which would be false and untrue and known by them to be false and untrue.

13. That Respondent is advised and believes that the Sheriff of this County has publicly proclaimed that the Defendant looks him in the eye like an innocent man; that the Sheriff has given said Defendant an entire cell block and has isolated him completely except from his friends; that the Sheriff has expressed himself as not desiring that nigger returned to the County Prison, meaning Respondent; that the Sheriff appears to fell that the requests made by Respondent are meant as a reflection upon the Sheriff, but same was not so intended to be construed, nor was same so represented to the Court at the time of the transfer, nor was any such allegations made before the Court, at the time of the passage of the second order transferring Respondent back to the City Prison, nor does Respondent believe that same was in mind of the Court at the time of the passage of the order or influenced the Court; but that the inadequate force allowed the Sheriff and the construction of the Jail rendered this request by Respondent necessary, and same was made by [illegible] with no sinister motive or facts, other than it was requested by Respondent and in the judgment of the representative of

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the State there was necessity for same.

Wherefore this Respondent agrees, to the passage of an order revoking former orders in this case, and waives his presence at the Court, upon a hearing of same.

(Signed) Wm. M. Smith,
Attorney for James Conley.

Georgia, Fulton County.

Personally appeared before me, the undersigned attesting officer, James Conley, who after being duly sworn deposes and swears that the facts set out in the above and foregoing response so far as they come within his own knowledge are true and where derived from the information of others he believes them to be true.

(Signed) James Conley

Sworn to and subscribed before me
this June 13,1913.
C.C. Tedder,
Notary Public, Fulton County, Ga.

IN RE:

Application of Hugh M. Dorsey, Solicitor General to release James Conley from Legal Custody.

In answer to the petition and order in the above stated cause, served upon us, as attorneys for Leo Frank, we herewith answer and showcause as follows:-

1. If the intention of the Solicitor General is to discharge this negro from custody because (a) he is in fact not a material witness against Frank or (b) although he is a material witness, his integrity and character are such that he ought to have his liberty and be trusted to obey the subpoena of this court, then considered as a witness only, he ought to be discharged and indeed he should not have been imprisoned at all. But in such case to enact the farce in the court's presence of releasing the negro and immediately return him to his wet-nurses, at the Police Station would resemble child's play.

2. But if the Solicitor believes that one of a number of contradictory statements made by this negro may, if properly preserved, be made valuable in the prosecution of Frank and that the negro may destroy its value if left free to talk, and in order to stop his mouth it is necessary that the detectives should keep him in charge, then we think we have the right to protest against any order of a court of justice that winks at such a purpose.

3. We are constrained to the conclusion that it is not the purpose for any reason to release this negro, but, by obtaining the order here sought, continue the present, illegal confinement.

4. But Frank is himself deeply interested in this proceeding, That the consent of the Solicitor and the will of the negro is all that is required to reverse the will of the law, is erroneous. The State has the right in the interest of justice to put a witness in custody, but where in custody and in whose custody is of the highest importance. The law has given such custody to the Sheriff and wisely so. The Sheriff is not a prosecutor; the jail itself is not usually a place of punishment, but a temporary place of detention. The Sheriff is supposed to stand impartially between the State and his prisoners, and may be trusted neither to conjole, threaten, nor suppress any testimony by third degree methods. The law never meant to place a witness, who, for lack of character, needs confinement under the control of a partisan prosecutor.

5. That the detectives should wish to keep Conley in custody and entertain him at the city's expense, is not at all surprising/ They have already extracted from him extravagant, unthinkable confessions, three or four in number. To these statements they have given the widest publicity, and to the credibility of the last one they have staked their reputations and hope of place.

Upon the constancy and stability of this witness, they have staked their all. They would be less than human if they did not

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bend all their power and ingenuity in holding him to his present statement, adding to and taking therefrom only such things as will aid its credibility.

Can any fair-minded man believe that Lanford is a fair man to be the custodian of this ignorant negro? What chance would he have to retract any lies he may have told, or if in a repentant mood, he should wish to tell the truth? This negro in the city prison, in the power of Lanford, apart from all questions of truth, would be just as dangerous as Lanford would wish him to be . No one knows that better than Lanford, and no one would fell it as acutely as will this negro. it

How well Lanford knows/can be seen from his interview in the Atlanta Georgian of June 12th. In that interview he demonstrated that he thinks he has full, unrestricted ownership of this negro. He graciously expresses his willingness for this negro to go before the Grand Jury upon such terms as he suggests. Neither the negro, nor the negro's lawyer, nor the Grand Jury, is considered. Nor was this court to be consulted - his will and not the order of this court was to determinewhen and under what circumstances the negro should leave the Police Station.

If Lanford vaunts in the face of jury and court, his power over this negro, what must be his bearing when he deals privately with the negro himself? What chance has he to abstract a lie or add a truth to the foolish statement which Lanford approves and wishes to maintain? If this man will, when he is holding this negro under your Honor's order, declare such ownership over this negro's person and movements, to what length would he go if the Court releases its power over him and turns him over to Lanford's unrestricted power?

6. It is just to Frank, as well as in the interest of public justice, that this negro should be detained by unbiased, fair men, whose reputations an' positions are not at stake. The law recognizes this right and has put that duty upon the Sheriff. Will there be less fairness and less decency in the county jail, than in the police station? When did Lanford become a wiser, fairer, better man than the Sheriff of this County?

7. Apart from this negro's position as a witness, his detention in the custody of the detectives would be a public calamity. Many unbiased people believe this negro is the murderrof little Mary Phagan. The facts of the case, apart fro. his own confession, point most strongly to him as the guilty man:

(a) On the day of the murder he was drunk and concealed himself in a position where he could readily commit the murder.

(b) On Monday morning he was unduly excited, so much so as to arouse the suspicions of the employees.

(c) When the police ~~when~~ were in the building, he was caught hiding in an obscure part of the factory where he had no business.

(d) When questioned about this conduct, he said he would give a large sum to be a white man. When asked why, he said he could then get safely past the police.

(e) He, for a long time persistently denied that he could write and did not admit that he could until longer denial was useless.

(f) He was caught washing a shirt, a thing he had never done before and when caught gave a foolish excuse.

(g) He denied all participation in, or knowledge of the crime until he was driven by the charge that he wrote the notes found near the body.

(h) On May 18, he made a signed statement outlining his actions on April 26, making no mention of the murder.

(i) On May 24, he made an affidavit. He said that on April 25th, before the murder on April ~~26~~ 26th, he wrote the notes at the request of Frank for which Frank gave him cigarettes and $2.50 and added statements about Frank's people in Brooklyn and an inquiry by Frank as to why he should hang.

(j) On the 28th of May, Conley made a long affidavit, full of contradictions and absurdities; beginning it as follows:

"I make this statement, my second statement in regard to the murder of Mary Phagan at the National Pencil Company factory. In

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my first statement, I made the statement that I went to the pencil factory on Friday, April 25th, and went in Frank's office at five minutes to one, which is a mistake. I make this statement in regard to Friday in order that I might not be accused of knowing anything of this murder, for I thought if I put myself there on Saturday they might accuse me of having a hand in it, and I now make MY SECOND AND LAST STATEMENT regarding the matter freely and voluntarily, after thinking over the situation, and I have made up my mind to tell the whole truth and I make it freely am voluntarily without the promise of any reward or from force or fear of punishment in any way."

(k) After this beginning he sets out with variations the writing of the notes on Saturday instead of on ~~Friday~~ Friday, and in a long rambling statement his movements ~~at~~ home and on Peters Street ~~and~~ on Saturday and on Monday at the factory, most of which is wholly disconnected with the murder.

(l) On May 29th, 1913, although ~~he had already~~ sworn that he had made "his true, full and last statement", he made another statement in which he purported to aid Frank in concealing the body of Mary Phagan. This statement is full of contradictions and wholly irreconcilable with itself and with the known facts surrounding the murder.

(m) He closes this remarkable affidavit in the following words: "The reason I have not told this before is that I thought Mr. Frank would get out and help me out, but it seems that he is not going to get out and I decided to tell the whole truth about the matter."

(8) These incoherent, ~~jabbering~~ jibbering statements will, it is believed, impress the Grand Jury if the negro Conley's case is submitted to it.

(9) The Grand Jury can be ~~s~~ trusted to scan these queer statements in the light of all the surrounding facts and circumstances and taken in connection with all the other facts implicating Conley, they proclaim his guilt beyond all reasonable doubt.

(10) The detectives, obsessed as they are with the assumption that Conley is a tool and not a murderer, are unfit to keep him in their sole and unlimited power. Under their protecting care, Conley, instead of being left to tell the truth, will at length deceive himself into the belief that instead of being a murderer he is an unfortunate victim.

(11) That Conley and his counsel wish it, is the best reason why it should not be done. As long as he sticks to a story pleasing to the detectives, or builds upon that story as additions may be needed, he is assured that the detectibes will save him as far as possitble from court and Grand Jury and will, so far as they can, fix upon him no greater crime than that of a misdemeanor.

(12) Conley and his counsel are wise. There is for them no other hope than for the detectives to keep Conley and save him from a confession that he committed the crime, giving him immunity, provided he continues to put the guilt on Frank.

Respectfully submitted,

Rosser & Brandon,
Attys. for Leo Frank.

Order granted that said James Conley be discharged as prayed and all orders, as set out in petition cancelled that were signed heretofore by me. This June 13, 1913.

(Signed) L. S. Roan,
J.S. St. Mt. Ct,
Presiding.

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The within and foregoing pages are hereby approved as a true, correct and complete brief of the evidence in the case herein (and at the caption thereof) referred to. October 31,1913.

(Signed) L.S.Roan,
J.S.C. St.Mt.Ct.

Filed in office 31st Oct. 1913
John H. Jones
Deputy Clerk

IN POOR CONDITION

STATE OF GEORGIA,
County of Fulton.

I Hereby Certify, That the foregoing pages, hereunto attached, contain a true Transcript of such parts of the record as are specified in the Bill of Exceptions and required, by the order of the Presiding Judge, to be sent to the Supreme Court of Georgia in the case of

LEO M. FRANK, Plaintiff in Error.

vs.

THE STATE OF GEORGIA, Defendant in Error.

Witness my signature and the seal of Court affixed this the 15TH day of November 1913

Arnold Broyles

Clerk Superior Court Fulton County, Georgia
Ex-Officio Clerk City Court of Atlanta

IN POOR CONDITION

No. 18 10852

Criminal Docket,

Term, 1913

SUPREME COURT OF GEORGIA

Frank

vs.

THE STATE.

TRANSCRIPT OF RECORD

Filed in office NOV 15 1913

W. E. Talley, D. C.

000791

Leo M. Frank,
Plaintiff in Error,
vs
State of Georgia,
Defendant in error.

Bill of Exceptions,
From Fulton Superior court,
From Conviction of Murder and Judgment of affirmance on February 17th, 1914.
Motion for Re-hearing.

And now comes Leo M. Frank, Plaintiff in error in the case above stated, who was the losing party therein, and at the same term at which the decision was rendered, and before the remittitur in said case has been forwarded to the clerk of the trial court, and files this his motion for re-hearing, on the grounds following, to-wit:

1. Because the court in rendering the decision in said case overlooked the following material facts, in the record, to-wit: Groundx 58 of the motion for new trial, which reads as follows:

"Because the court permitted the witness, Miss Cato, over the objection of the defendant that the same was incompetent, illegal and immaterial, to testify substantially as follows: 'I know Miss Rebecca Carson. I have seen her go twice into the private ladies' dressing room with Leo M. Frank.'

"The court permitted this testimony over the objection of the defendant made as is aforesaid and in doing so committed error. The court stated that this evidence was admitted to dispute the witness they had called.

"It was wholly immaterial to the issues involved in the case whether Frank did or did not go into a private dressing room with Miss Carson. It did, however, prejudice the jury as indicating Frank's immorality with reference to women."

Said ground just quoted set up material facts constituting error in said case, which the court in the decision rendered, overlooked, and which were not considered in said decision, which appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground here quoted, was material. The facts alleged herein to be overlooked in this ground was discussed in the brief filed by plaintiff in error, as will appear from pagex 209 to 212 of the original brief, filed in this case.

2. Because the court in rendering the decision in said case, overlooked the following material facts, in the record, to-wit: Ground 59 of the motion for new trial, which reads as follows:

"Because the court erred in permitting the witness Maggie Griffin, to testify over the objection of the defendant made when the

testimony was offered that the same was immaterial, illegal and incompetent, to testify substantially as follows:-

'I have seen Miss Rebecca Carson go into the ladies' dressing room on the fourth floor with Leo M.Frank. Sometimes it was in the evening and sometimes in the morning during working hours. I saw them come in and saw them come out during working hours.'

"The court permitted this testimony to go to the jury over the objection of the defendant made as is aforesaid and in doing so committed error. The court stated that this evidence was admitted to dispute the witnesses they had called.

"It was wholly immaterial to the issues involved in this case whether Frank did or did not go into a private dressing room with Miss Carson; it did, however, prejudice the jury as indicating Frank's immorality with reference to women."

Said ground just quoted set up material facts constituting error in said case, which the court in the decision rendered, overlooked, and which were not considered in said decision, which appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground here quoted, was material. The facts alleged herein to be overlooked in this ground were discussed in the brief filed by plaintiff in error, as will appear from 209 to 212 of the original brief filed in this case.

3. Because the court in rendering the decision in said case, overlooked the following material facts, to-wit: ground one of the motion in the record, for new trial, which reads as follows:

""Because the court erred in permitting the solicitor to prove by the witness Lee, that the detective Black talked to him, - the witness, ~~xx~~ longer and asked him more questions at the police station than did Mr. Frank the day when he talked to the witness Lee at twelve (12) o'clock at night on April 29th.

"At the request of Black and Scott, the detectives, Frank was induced to have an interview with Lee, the witness, for the purpose of eliciting information from him. The solicitor contended that Frank made no effort to find out anything from Lee, and to that end, sought to show and was permitted to prove by Lee that Black talked longer to him than did Frank at the time stated.

"The defendant, then and there at the trial, objected to such evidence upon the ground that it was irrelevant, immaterial and was a mere conclusion of the witness. The court admitted the evidence over such objections and ~~in doing so~~ erred, because said evidence was unwarranted, immaterial and a mere conclusion of the witness and injurious to the defendant."

Said ground just quoted set up material facts constituting error in said case, which the court in the decision rendered overlooked, and which were not considered in said decision, which appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground here quoted, was material. The facts alleged herein to be overlooked in this ground were discussed in the brief filed by plaintiff in error, as will appear from page

135 to 137 of the Brief filed in this case.

4. Because the court in rendering the decision in said case, overlooked the following material facts in the record, to-wit: ground two of the motion for new trial, which reads as follows:

"Because the court erred in permitting over objections the witness Lee to testify that Frank, on April 28th, when alone with him at the station house, talked to him a shorter time than did Mr. Arnold, one of Frank's attorneys, when he interviewed the witness just before the trial.

"The detectives had induced Frank to talk to Lee alone on April 28th at the station house for the purpose of inducing Lee to talk. Mr. Arnold, in the presence of Lee's Attorney and the jailer, had interviewed Lee just before the present trial.

"The solicitor - over the objections of Frank's attorneys that the evidence offered was immaterial, irrelevant, and the expression of an opinion, was permitted by introducing said evidence to draw a comparison of the time occupied by Frank and Arnold to their respective interviews, and, in doing so, the court erred because the evidence offered was immaterial, irrelevant and the expression of an opinion."

Said ground just quoted, set up material facts constituting error in said case, which the court in the decision rendered overlooked, and which were not considered in said decision, which appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground here quoted, was material. The facts alleged herein to be overlooked in this ground were discussed in the brief filed by plaintiff in error, as will appear from pages 135 to 137 of the Brief filed in this case.

5. Because the court in rendering the decision in said case, overlooked the following material facts in the record, to-wit: ground seven of the motion for new trial, which reads as follows:-

"Because the court, over objection made when the evidence was offered that the same was irrelevant, permitted the witness Black to testify that Frank had counsel, Messrs Rosser and Haas about eight or eight thirty o'clock Monday morning while Frank was in the station house, brought there by detectives Black and Haslett.

"Movant contends the employment of counsel, under the circumstances was no evidence of guilt; but the court's conduct in submitting the fact to the jury was greatly hurtful to the defense.

"Said evidence was illegal, irrelevant and prejudicial and its admission over objection is here assigned as error for said reasons."

Said ground just quoted set up material facts constituting error in said case, which the court in the decision rendered overlooked and which were not considered in said decision, which appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground [illegible] was material. The facts alleged herein to be overlooked in this ground were discussed in the brief filed by plaintiff in error, as will appear from pages 140

to 141 of the brief filed in this case.

6. Because the court in rendering the decision in said case, overlooked the following material facts in the record, to-wit: ground 16 of the motion for new trial, which reads as follows:

"Because the court, over objection of the defendant, made at the time the evidence was offered, that the same was irrelevant, immaterial and not binding on Frank, permitted the witness, Mrs. White, to testify that Arthur White, her husband, and Campbell are both connected with the Pencil Company and that she never reported seeing the negro on April 26th, 1913, which she testified she did see in the pencil factory, to the City detectives until May 7th, 1913.

"For the reasons above stated, the court erred in not excludding the evidence, and for the reason that the solicitor, in his address to the jury, contended that the fact that there was a negro (which he contended was Conley) in the factory the morning of April 26th, was concealed from the authorities and that such concealment was evidence of Frank's guilt."

Said ground just quoted, set up material facts constituting error in said case, which the court in the decision rendered overlooked and which were not considered in said decision, which appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground here quoted, was material. The facts alleged herein to be overlooked in this ground were discussed in the brief filed by plaintiff in error, as will appear from pages 213 of the brief filed in this case.

7. Because the court in rendering the decision in said case, overlooked the following material facts in the record, to-wit: ground 23 of the motion for new trial, which reads as follows:

"Because the court permitted, over the defendant's objection, made when the testimony was offered, that it was illegal, immaterial, and because it could not be binding on the defendant, , the witness S.L. Rosser, to testify that since April 26th, 1913, he had been engaged in connection with this case; that he visited Mrs. Arthur White subsequent to April 26th; that the first time the witness ever claimed to have seen the negro at the factory when she went into the factory on April 26th was some time about the 6th or 7th of May.

"The court, over objections as stated, admitted the testimony just above, and in doing so erred, for the reasons herein stated.

"This was particularly prejudicial to the defendant, because the solicitor contended in his argument to the jury that the fact that factory employees did not disclose the fact that Mrs. White saw the negro on April 26th was evidence that the defendant was seeking to suppress testimony material to the discovery of the murderer."

Said ground just quoted, set up material facts constituting error in said case, which the court in the decision rendered overlooked, and which were not considered in said decision, which appears from the face thereof. Plaintiff in error says that the error committed, as is

disclosed from an inspection of the ground here cuoted, was material. The facts alleged herein to be overlooked in this ground were discussed in the brief filed by the plaintiff in error, as will appear from pages 213 to 215 of the brief filed in this case.

8.- Because the Court, in rendering the decision in said case, overlooked the following material facts in the record, to-wot, Ground 26 of the motion for new trial, which reads as follows:

"Because the Court, in permitting the witness, Harry Scott, to testify over the objection of defendant, made at the time the testimony was offered that the same was irrelevant, immaterial and not binding upon the defendant, that he did not get any information from any one connected with the National Pencil Company that the negro Conley could write, but that he got his information as to that from entirely outside sources, and wholly disconnected with the National Pencil Company.

"The Court permitted this testimony to be given over the objections above stated, and in doing so, for the reasons therein stated, committed error.

"This was prejudicial to the defendant, because the negro Conley at first denied his ability to write, and the discovery that he could write was as the State contended the first step towards connecting Conley with the crime, and the Solicitor contended in his argument to the jury that the fact that the Pencil Company authorities knew Conley could write, and did not disclose that to the State authorities, was a circumstance going to show the guilt of Frank".

Said ground just quoted set up material facts constituting error in said case, which the Court in the decision rendered overlooked, and which were not considered in said decision, which appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground here quoted, was material. The facts alleged herein to be overlooked in this ground were discussed in the brief filed by plaintiff in error, as will appear from pages 231 to 234 of the original brief, filed in this case.

9.- Because the Court, in rendering the decision in said case, overlooked the following material facts in the record, to-wit, Ground 27 of the motion for new trial, which reads as follows:

"Because the Court permitted the witness, Harry Scott, to testify over the objection of defendant's counsel, made when the testimony was offered, that the same was irrelevant, immaterial, illegal and not binding on the defendant, that the witness first communicated Mrs. White's statements about seeing a negro on the street floor of the pencil factory on April 26, 1913, to Black, Chief Lanford, and Bass Rosser, that the information was given to the detectives on April 28.

"The Court, over the defendant's objection, permitted the above testimony to be given, and in doing so erred for the reasons above stated.This was prejudicial to the defendant, because it was contended by the State that this witness, Harry Scott, who was one of the Pinkerton detectives who had been employed to ferret out the crime, by Frank acting for the National Pencil Company, had not promptly informed the officials about the fact of Mrs. White's seeing this negro, and that such failure was evidence pointing to the guilt of Frank".

This witness was one of the investigators for the pinkerton Detective Agency, who was employed by Frank acting for the National Pencil Company to ferret out this crime".

Said ground just quoted set up material facts constituting error in said case, which the Court in the decision rendered, overlooked, and which

were not considered in the decision, which appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the grounds here quoted, was material. The facts alleged herein to be overlooked in this ground were discussed in this brief filed by plaintiff in error, as will appear from pages 213 to 215 of the original brief, filed in this case.

10.- Because the Court, in rendering the decision in said case, overlooked the following material facts in the record, to-wit, Ground 32 of the motion for new trial, which reads as follows:

"Because the Court erred in declining to allow the witness, Miss Hall, to testify that on the morning of April 26, and before the murder was committed, Mr. Frank called her over the telephone, asking her to come to the pencil factory to do stenographic work, stating at the time he called her that he had so much work to do that it would take him until six o'clock to get it done.

"Defendant contends that this testimony was part of the res gestae and ought to have been heard by the Court, and failure to do so committed error".

Said ground just quited set up material facts constituting error in sai case, which the Court, in the dasiscion rendered, overlooked, and which were not considered in said decision, which appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the grounds here quoted, was material. The facts alleged herein to be overlooked in this ground were discussed in the brief filed by plaintiff in error, as will appear from pages 289 to 292 of the original brief, filed in this case.

11.- Because the Court, in rendering the decision in said case, overlooked the following material facts in the record, to-wit, Ground 34 of the motion for new trial, which reads as follows:

"Because, while Mrs. Freeman was on the stand, after testifying as to other things, she testified that while she and Miss Hall, on April 26, were at the restaurant immediately contiguous to the pencil factory, and after they had left the factory at 11.45 o'clock a. m., and had had lunch that Lemmie Quinn came in and stated that he had just been up to see Mr. Frank.

"Upon motion of the Solicitor, this statement that he had been up to see Mr. Frank was ruled out as hearsay.

"This statement of Lemmie Quinn was a part of the res gestae, and was not hearsay evidence, and was material to the defendant's cause. Lemmie Quinn testified that he saw Mr. Frank in his office just before he went down to the restaurant and had the conversation with Mrs. Freeman and Miss Hall;; this testimony was strongly disputed by the Solicitor. Lemmie Quinn's statement that he was in Frank's office just before going into the restaurant was of the greatest moment to the defendant, because it strongly tended to dispute the contention of the State that Mary Phagan was killed between twelve and half past.

"The Court erred in ruling out and declining to hear this, for the reasons above stated. The testimony was relevant, material and part of the res gestae, and should have been sent to the jury".

Said ground just quoted set up material facts constituting error in said case, which the Court in the decision rendered, overlooked, and which were not considered in said decision, which appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground here quited, was material. The facts alleged herein to be overlooked in this ground, were discussed in the brief filed by plaintiff in error, as will appear from pages 289 to 292 of the original brief, filed in this case.

12. Because the court in rendering the decision in said case, overlooked thefollowing material facts, to-wit: Ground 55 of the motion for New Trial, which readsas follows:

> "Because the Court permitted the witness L. T. Kendrick over the objection of the defendant, made at the time the evidence was offered that the same was irrelevant, immaterial and incompetent, to testify substantially as follows:
> 'The clock at the pencil factory, when I worked there, needed setting about every 24 hours. You would have to change it from about three to five minutes, I reckon.'
> The Court permitted this testimony to be heard over the above stated objections of the defendant, and in doing so committed error.
> Kendrick had not worked at the factory for months and whether or not the clock was correct at that time was immaterial and tended to confuse the jury in their effort to determine whether or not the clock was accurate upon the date of the tragedy."

Said ground just quoted sets up material facts constituting error in said case - which the court in the decision rendered overlooked, and which was not considered in said decision as appears from the fact thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground here quoted, was material. The fact alleged herein to be overlooked in this ground was discussed in the brief filed by plaintiff in error, as will appear from page 46 of the reply brief filed in this case.

13. Because the court in rendering the decision in said case, overlooked the following material facts, to-wit: Ground 67 of the Motion for New Trial, which reads as follows:

> "Because the Court erred in failing to charge the jury that if a witness knowingly and yilfully swore falsely in a material matter, his testimony shall be rejected entirely, unless it be corroborated by facts and circumstances of the case or other creditable evidence.
> The Court ought to have given this charge, although no written request was formally made therefor, for the reason that the witness Jim Conley, who testified as to aiding Frank in the disposal of the body, was attacked by the defendant as utterly unworthy of belief, and he admitted upon the stand that he knew that he was lying in the affidavits made by him, with reference to the crime and before the trial.
> Especially ought this charge to have been given, because the Court, in his charge to the jury, left the question of the credibility of witnesses to the jury, without any rule of law to govern them in determining their credibility."

Said ground just quoted set up material facts constituting error in said case - which the court in the decision rendered

overlooked, and which was not considered in said decision as appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground here quoted, was material. The fact alleged herein to be overlooked in this ground was discussed in the brief filed by plaintiff in error, as will appear from pages 298 to 300 of the brief filed in this case.

14. Because the court in rendering the decision in said case, overlooked the following material facts, to-wit: Ground 54 of the Motion for New Trial, which reads as follows:-

> "Because the Court permitted the witness Scott to testify in behalf of his Agency, over the objection of the defendant, that the same was irrelevant, immaterial and incompetent, substantially as follows:
> 'I got hold of the information about Conley knowing how to write through my operatives that I had investigating while I was out of town. McWorth told me in person when I returned.'
> The Court permitted this testimony over the defendant's objections, as above stated, and in doing so committed error. This was prejudicial to the defendant, because the solicitor contended that the failure of Frank to report the fact that Conley could write, was a circumstance against Frank's innocence, and he sought to show by the above testimony that the detectives were forced to get that information from someone other than Frank."

Said ground just quoted set up material facts constituting error in said case - which the court in the decision rendered overlooked, and which were not considered in said decision as appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground here quoted, was material. The fact alleged herein to be overlooked in this ground was discussed in the brief filed by plaintiff in error, as will appear from pages 231 to 234 of the brief filed in this case.

15. Because the Court in rendering the decision in said case, overlooked the following material facts, to-wit: Ground 53 of the Motion for New Trial, which reads as follows:-

> "Because the Court permitted the witness J. M. Gantt, over the objection of the defendant, made when the evidence was offered that the same was irrelevant and immaterial, to testify substantially as follows:

"The clock of the pencil company was not accurate. They may vary all the way from three to five minutes in 24 hours.'

The Court admitted this testimony over the objections made and in doing so committed error, for the reasons stated.

This was prejudicial to the defendant, because whether the clocks were or were not accurate on April 26th was material to his defense. The witness Gantt had not worked at the factory for three weeks and the fact that the clocks were not keeping accurate time three weeks before the trial was immaterial, and the evidence thereon tended to mislead and confuse the jury. Gantt had not worked at the factory during the three weeks just prior to the crime, and his testimony as to the clocks related to the time he did work at the factory."

Said grounds just quoted set up material facts constituting error in said case - which the court in the decision rendered overlooked, and which were not considered in said decision as appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground here quoted, was material. The fact alleged herein to be overlooked in this ground was discussed in the brief filed by plaintiff in error, as will appear from page 46 of the reply brief, filed in this case.

16. Because the Court in rendering the decision in said case, overlooked the following material facts, to-wit: Ground42 of the Motion for New Trial, which reads as follows:

"Because the Court permitted McWorth, at the instance of the Solicitor-General to testify over the objections of the defendant, made when the evidence was offered, that the same was irrelevant, immaterial and illegal:

'I reported it (the finding of the club and envelope) to the police force about 17 hours afterwards. After I reported the finding, I had a further conference with the police about it about four hours afterwards. I told John Black about the envelope and the club. I turned the envelope and club into the possession of H. B. Pierce.'

The Court heard this testimony over the objection of the defendant, made as above stated, and in doing so committed error, for the reasons herein stated.

This was prejudicial to the defendant, because the Solicitor-General contended that his failure to sooner report the finding of the club and the evenlope to the police were circumstances against Frank. These detectives were not employed by Frank, but by Frank for the National Pencil Company, and movant contends that he is not bound by what they did or failed to do. The Court should have so instructed the jury."

Said ground just quoted set up material facts constituting error in said case - which the court in the decision rendered overlooked, and which were not considered in said decision as appears from the face thereof. Plaintiff in error says that the

error committed, as is disclosed from an inspection of the ground here quoted, was mate ial. The fact alleged herein to be overlooked in this ground was discussed in the brief filed by plaintiff in error, as will appear from page 45 of the reply brief filed in this case.

17. Because the court in rendering the decision in said case, overlooked the following material facts, to-wit: Ground 35 of the Motion for New Trial, which reads as follows:

> "Because the Court permitted, at the instance of the Solicitor-General, the witness Sig Montag, to testify over the objection of the defendant, made when same was offered, that same was irrelevant, immaterial and incompetent; that the National Pencil Company employed the Pinkertons; that the Pinkertons have not been paid, but have sent in their bills; that they sent them in two or three times; that, otherwise, no request has been made for payment, and that Pierce, of the Pinkerton Agency, has not asked the witness for payment.
>
> In permitting this testimony to go to the jury, over the objections above stated, the Court erred.
>
> The introduction of this evidence was prejudicial to the defendant, for the reason that the solicitor contended that the pay due the Pinkertons by the Pencil Company was withheld for the purpose of affecting the testimony of the agents of that Company."

Said ground just quoted set up material facts constituting error in whid case - which the Court in the decision rendered overlooked, and which were not considered in said decision as appears from the face thereof. Plaintiff in error says that the error committed, as is disclosed from an inspection of the ground here quoted, was material. The fact alleged herein to be overlooked in this ground was discussed in the brief filed by plaintiff in error, as will appear from page 45 of the reply brief filed in this case.

18. Because the court in rendering the decision in said case, and in the 17th head note and in the 17th division of the opinion, held (as the head note reads): "From the evidence, the court is authorized to find that the jury was not influenced to render other than true answers to the questions propounded," by a loud cheering from persons on the out side of the courthouse which took place while the polling of the jury was being taken; and further on, in the body of the opinion, under division 17, the court use the following language upon this same subject: "We think that the affidavits of jurors submitted in regard to this occurrence was sufficient to show that there was no liklihood that there was any such result. Under such circumstances we do not think that the occurrence complained of amounts to more than an irregularity which was not prejudicial to the accused."

The plaintiff in error respectfully submits that the court in rendering this decision, overlooked the case of Collier vs the State, reported in 115 Ga., page 803; and in said Collier case the disorder occurred in the hearing of the jury, and in the language of the Collier decision: "Each one of the jurors who tried the case testified by affidavit and they all agreed in the statement that they were not influenced by any demonstration; that the noise in the courthouse yard had no effect upon them as jurors; and that they were controlled alone by the evidence in the case and endeavored to return a proper verdict and they continued of the opinion that they had done so." The Collier case proceeds to recite further evidence of the jurors, - all tending to show that they were not influenced by the demonstration, - and the two court bailiffs likewise made affidavits. In the Collier decision it was held broadly, as the head note reads - that the plaintiff inerror did not have a fair and impartial trial in the manner contemplated by law, which is guaranted to him by the constitution of this state, and that whether the verdict was or was not supported by the evidence, it should, for that reason be set aside, and the court on page 808 of the decision, say: "It would be mere idle talk to say that the jurors did not understand that the demonstration was againstthe prisoner on trial. It is true that each of the jurors testified that the noise and demonstration made by this crowd did not affect his verdict." Further on, in the same decision, on the same page, the court say: "We have no reason to, and do not doubt that each member of the jury who testified was sincere and honest

in his belief that his verdict was in no way affected by the demonstration during the progress of the trial or by that which subsequently occurred while the jury were considering their verdict. But the question is not whether ~~in effect~~ the jurors were influenced by this demonstration, but were the demonstrations calculated to influence the jurors in their action." And the court proceed to cite the Wolfolk case, 81st Ga., 551 and ~~the case~~ of Smith vs Lovejoy, 62nd Ga., 398, in which the court held in fact that the affidavits of jurors did not clear up such a matter, as it ~~was im~~possible for them to tell what had influenced their minds.

Plaintiff in error submits that the decision in the case at bar is contrary to the decision in the Collier case, in the Wolfolk case and in the case of Smith vs Lovejoy, and as neither of said decisions are quoted or referred to in the opinion, - plaintiff in error respectfully submits ~~that they~~ were overlooked by the court.

19. Plaintiff in error respectfully submits that the court overlooked the facts stated in ground 89 of the motion which was referred to and argued on page 198 of the printed brief of plaintiff in error, which refers to the testimony of the witness Owens, to the effect that he ran on route 8 of the street railway in Atlanta, from White City to Howell Station; that he was due in town at 12:05, this being ahead of the schedule of Cooper Street and English Avenue two minutes; that he has ~~known the English~~ Avenue and Cooper Street cars to get to the junction of Marietta and Broad Streets ahead of his car; that the English Avenue car is due there at 12:07 and the witness' schedule was due at 12:05; that he has known the English Avenue car to get there as much as two minutes ahead; that he has known this to occur ~~after April 26th~~, which was the day of the tragedy; but that he did not know whether it ever ~~occurred~~ prior to that time.

Plaintiff in error submits that this testimony of Owens stands on a ground distinct and apart from the testimony of the other street car men to the effect that at and prior to the day of the tragedy, the street cars on this line may have run ahead of schedule time. Head note 6 of the decision and the corresponding portion of the opinion deals with this subject, and it uses the language that it was competent for the state to show that infact the car on the line traveled by the girl in going from her home to the factory frequently arrived at the point in question several minutes

ahead of schedule.

In the body of the opinion, the testimony of the state which was introduced as showing the time of arrival of cars was that of an inspector who testified that once or twice he called attention to the motorman running in ahead of schedule time, and two other witnesses who testified that they were operatives on the line in question and that they had known the car to come in several minutes ahead of schedule time. There is no distinct notice in the opinion of the witness Owens whose only testimony related to a period after April 26th.

Counsel for the defendant conclude that the court overlooked the special point made on the testimony of Owens to the effect that whether the testimony is generally admissible or not, showing this car to have come in ahead of schedule time at and before the day of the tragedy, - that after the date of the tragedy, it could have no possible bearing on the case, - the criticism in the brief of Plaintiff in error, on pages 198 and 199 being as follow : "Owens' testimony deals wholly with transactions occurring after the murder. Whether the English Avenue car scheduled for Broad Street at 12:07 - ~~got there on time~~ on April 26th was the issue. When it got there on any other day after April 26th was of no possible moment; that a given car broke its schedule after a given date in no way illustrates whether it did or did not break it at any prior date."

20. Plaintiff in error contends that the court in deciding such case, overlooked the following material proposition in deciding upon the admissibility of the witness Conley's testimony. The court decided ~~xxxx~~ as counsel for plaintiff in error ~~xxxxxxxxxx~~ construe the decision that Conley having said that Frank remarked "Of course, you know, I ain't built like other men" - and from the condition of the body, - it being inferable that the person who did the killing sought to have a sexual relation, natural or un-natural, with the deceased, - that it was relevant to explain the expression noted by showing previous transactions of the ~~accused known~~ to him and the witness, which indicated that his conduct in sexual matters differs from that of other men.

Plaintiff in error submits that the remark quoted as to being built like other men is no evidence of any connection, natural or un-natural, with any female and is no evidence that any transaction occurred between the deceased and the defendant of any kind or description; and further submits that there is no evidence in the record whatever showing any kind of sexual relation between the deceased and any person at or just before the time of the killing.

Plaintiff in error submits that in as much as the alleged remark made by the accused according to Conley's testimony, was no evidence of any sexual act and was indeed no evidence of any transaction between the accused and deceased; that it could not be explained by or made the basis for the evidence of other un-natural crimes as testified to by the witness Conley.

21. Plaintiff in error shows that in the 19th head note, the court recites that where the order over ruling the motion for new trial contains nothing which could indicate that the judge was dissatisfied with his verdict or that he failed to exercise his discretion "The Supreme court will not in determining whether the judge has exercised sound discretion consider oral remarks by him, pending the disposition of the motion."

Plaintiff in error contends that the remarks made by the judge which form the basis of the ground under consideration, were not merely made pending the disposition of the motion for new trial but were part of the oral judgment delivered by the court, disposing of the motion. They were as much a part of the decision of the motion for new trial as that part of the decision which denied the new trial, and it so appears in the Bill of Exceptions, and plaintiff in error contends that the court overlooked this feature of the record.

Respectfully submitted,

L. J. Rosser,
Reuben R. Arnold,
Herbert Haas
Leonard Haas,
Attorneys for Plaintiff in Error.

The undersigned, L. Z. Rosser, Reuben R. Arnold, Herbert Haas and Leonard Haas, do hereby certify that they are counsel for plaintiff in error in the case above stated, and that upon careful examination of the opinion of the Supreme Court therein,- they and each of them believe that the facts set forth in the foregoing motion for re-hearing have been overlooked.

This 24th, day of February, 1914.

L. Z. Rosser

Reuben R. Arnold

Herbert J. Haas

Leonard Haas

Attorneys for Plaintiff in Error.

(Criminal (D.C.S.C.))

In Supreme Court of Georgia.

October Term, 1913.

Leo M. Frank,

Plaintiff in Error

vs

State of Georgia,

Defendant in Error.

Motion for Re-Hearing.

Filed in office.
W. E. Valley, D.C.S.C., Ga.

Motion for re-hearing overruled February 25th 1914.

L.Z.Rosser,
Reuben R.Arnold,
Herbert Haas,
Leonard Haas,
Attorneys for Plaintiff in Error.

LEO M. FRANK,

Plaintiff in error.

Vs.

THE STATE OF GEORGIA.

Defendant in error.

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ORIGINAL MOTION FOR NEW TRIAL

STATE OF GEORGIA
vs.
LEO M. FRANK
} CONVICTION OF MURDER IN FULTON SUPERIOR COURT.

MOTION FOR NEW TRIAL.

And now comes the defendant in the above stated case and moves the court for a new trial upon the grounds following, to-wit:

1. The verdict is contrary to the evidence.
2. The verdict is contrary to the law.
3. The verdict is against the weight of the evidence.
4. The court, over the objection of the defendant, heard evidence of other transactions and tending to establish other crimes and offenses, wholly separate and distinct from the charge in the Bill of Indictment, to the injury and prejudice of the defendant.

Wherefore, for these and other good grounds to be urged upon the hearing, the defendant, Leo M. Frank, moves that said verdict be set aside and a new trial granted.

REUBEN R. ARNOLD,
L. Z. ROSSER,
HERBERT J. HAAS,
Attorneys for Leo M. Frank, Movant.

Read and considered. Let the foregoing motion for new trial be filed and let a copy thereof be served upon the Solicitor General. It is ordered that the State show cause before me on the fourth day of October 1913, at my Chambers, Thrower Building, Atlanta, Ga., why the verdict should not be set aside and a new trial granted. In the meantime, and until after this motion may be heard, it is ordered that the movant have the right to prepare and have approved and filed a proper brief of the evidence in said case; and that should said motion be postponed, that such right to prepare and have approved and file such brief of the evidence shall exist and remain in the movant until such time as the motion may be finally heard. In the meantime let the execution of the court's sentence be suspended. It is further ordered

that until such time as this motion may be heard and decided, that the movant have full leave to amend this motion for new trial.

This 26th day of August, 1913. L. S. ROAN,
Judge S. C. Stone Mountain Circuit,
Presiding.

GEORGIA, FULTON COUNTY:

Service acknowledged. Copy received. All other and further service waived.

This Aug. 27, 1913.

F. A. HOOPER,
HUGH M. DORSEY,
E. A. STEPHENS,
Solicitor General, Fulton County, Georgia.

We further agree to the order within giving time to prepare and file a legal brief of the evidence. Aug. 27, 1913.

HUGH M. DORSEY,
Solicitor general.

AMENDED MOTION FOR NEW TRIAL.

GEORGIA, FULTON COUNTY.
State of Georgia,
vs.
Leo M. Frank.

No.
Fulton Superior Court,
July Term, 1913.

And now comes the defendant in the above stated cause, Leo M. Frank, and amends his motion for new trial heretofore filed in this case, and says:

That the verdict in the above stated case should be set aside and a new trial granted for the following reasons, to-wit:

1. Because the Court erred in permitting the solicitor to prove by the witness, Lee, that the detective Black talked to him, the witness, longer and asked him more questions at the police station than did Mr. Frank the day when he talked to the witness Lee at twelve (12) o'clock at night on April 29th.

At the request of Black and Scott, the detectives, Frank was induced to have an interview with Lee, the witness, for the purpose of eliciting information from him. The solicitor contended that Frank made no effort to find out anything from Lee, and to that end, sought to show and was permitted to prove by Lee that Black talked longer to him than did Frank at the time stated.

The defendant, then and there at the trial, objected to such evidence upon the ground that it was irrelevant, immaterial, and was a mere conclusion of the witness. The Court admitted the evidence, over such objections, and in doing so erred, because said evidence was unwarranted, immaterial and a mere conclusion of the witness and injurious to the defendant.

2. Because the Court erred in permitting, over objections the witness Lee to testify that Frank, on April 29th, when alone with him at the station house, talked to him a shorter time than did Mr. Arnold, one of Frank's attorneys, when he interviewed the witness just before the trial.

The detectives had induced Frank to talk to Lee alone on April 29th at the station house for the purpose of inducing Lee to talk. Mr. Arnold, in the presence of Lee's attorney, and the jailer, had interviewed Lee just before the present trial.

The solicitor, over the objections of Frank's attorneys that the evidence offered was immaterial, irrelevant, and the expression of an opinion, was permitted by introducing said evidence to draw a comparison of the time occupied by Frank and Arnold to their respective interviews, and, in doing so, the Court erred because the evidence offered was immaterial, irrelevant and the expression of an opinion.

3. Because the Court permitted the solicitor over the objection of defendant made at the time the evidence was offered that the same was irrelevant and immaterial, to show by the witness J. N. Starnes that the witness Lee, the morning the body was found, while in the office of the pencil factory and when under arrest was composed. Said evidence was objected to as illegal, unwarranted and hurtful to the defendant and movant now says that its admission was error for the same reasons.

This evidence was hurtful, because used by the solicitor in his address to the jury in contrasting the deportment of Frank, who was claimed to be nervous and excited.

4. Because the Court erred in permitting the witness Starnes, over objection of the defendant, made when the evidence was offered, because it was a conclusion, to say that his conversation with Frank over the telephone the morning of the finding of the body, was guarded—that he was guarded as to what he said.

This evidence was objected to as unwarranted and a conclusion, and movant here assigns its admission as error for the same reasons.

Movant contends this was hurtful to the defendant, and there was a dispute as to what Starnes said to Frank in that conversation, and the solicitor contended that Frank's words and conduct in connection with that conversation was evidence of his guilt. Starnes' statement that he was guarded in that conversation as to what he said, tended to impress the jury that he was accurate in his memory as to the words of the conversation.

5. Because the Court admitted what purported to be a picture of the second or office floor, the street floor and basement of the factory. On this picture was traced red dotted lines extending from the back of the office floor, down the elevator to the basement, and down the basement near the back of the building. There were, also, Greek crosses on the picture. It was con-

ceded by the State that these dotted lines and crosses were no part of nor represented any part of the building but were put in the picture for the purpose of illustrating the theory of the State, as showing where the body was found and where it was carried.

The admission of the picture in evidence, with the lines and crosses thereon, was, when offered, objected to because, as movant contends, it was argumentative, representing and illustrating the State's view of the case by means of red lines and crosses, which was no part of, nor illustrated any part of the building.

The admission of said diagram and drawing was error for the same reasons as set out in the above objections, the objection being that the same wsa illegal and prejudicial, and movant assigns error in their admission for the same reason.

6. Because the Court, over objection made when the evidence was offered, that the same was a conclusion, permitted the witness Black to testify that in a conversation had with Frank months before the tragedy that he didn't remember anything that caused him to believe that Frank was nervous, the hurtful purpose being to compare his then conduct with that after the tragedy.

This evidence here objected to was illegal, a conclusion, and prejudicial, and movant says its admission was error for said reasons.

7. Because the Court, over objection made when the evidence was offered that the same was irrelevant, permitted the witness Black to testify that Frank had counsel, Messrs. Rosser and Haas about eight or eight thirty o'clock Monday morning while Frank was in the station house, brought there by detectives Black and Haslett.

Movant contends the employment of counsel, under the circumstances was no evidence of guilt; but the Court's conduct in submitting the fact to the jury was greatly hurtful to the defense.

Said evidence was illegal, irrelevant and prejudicial and its admission over objection is here assigned as error for said reasons.

8. Because the Court refused to permit the witness Black to testify on cross-examination that when he found a bloody shirt in the bottom of a barrel in Newt Lee's house, that he carried the shirt to the station house, showed it to Lee, and, when Lee was asked by the witness if the shirt was his, the solicitor objected that the witness should not be allowed to answer the question: "Did he (Lee) say that the shirt was his?"

The Court would not permit the witness to give Lee's answer that the shirt was his.

This answer of Lee's was, as movant contends, part of the res gestae of the shirt transaction, and Lee's answer ought to have been heard.

The Court erred, as movant contends, in ruling out the answer of Lee and not allowing it to come out as a part of the entire transaction.

9. Because the Court, over objection made by the defendant at the time the same was offered, that it was immaterial and irrelevant, permitted the witness Darley to testify that on the morning the body was found Newt Lee was composed.

Dfendant objected to this evidence as illegal, irrelevant and prejudicial to defendant which objection was overruled and movant assigns its admission as error for said same reasons.

This evidence was not only irrelevant and immaterial, as movant contends, but hurtful, because this evidence was heard upon the theory of comparison between the conduct of Lee and Frank.

10. Because the Court erred in failing, refusing, and declining, upon motion of the defendant made while the witness Conley was on the stand, to rule out, withdraw and exclude from the jury each and all of the following questions and answers of the witness Conley:

Q. What did he mean?

A. Well, what I taken it to be, the reason he said he wasn't built like other men, I had seen him in a position I hadn't seen any other man in that has got children.

Q. What position?

A. I have seen Mr. Frank in the office there about two or three times before Thanksgiving and a lady was in the office, and she was sitting down in a chair and she had her clothes up to here (up to her waist) and Mr. Frank was down on his knees, and she had her hands on Mr. Frank, and I found them in that position.

Q. When you came into the office before Thanksgiving day, now, when the lady was sitting in the chair?

A. Yes, sir; he saw me when he came out of the office, he saw me.

Q. What was said when they saw you?

A. When Mr. Frank came out of the office Mr. Frank was hollering "Yes, that is right, that is right" and he said, "That is all right, it will be easy to fix it that way."

Q. Well, did you ever see him on any other occasion?

A. Yes, sir; I have seen him on other times there.

Q. What other occasions?

A. I have seen Mr. Frank in the packing room there one time with a young lady lying on the table.

Q. How far was the woman on the table?

A. Well, she was on the edge of the table when I saw her.

The motion was made while the witness Conley was on the stand, and before any cross-examination had been had upon either of the circumstances referred to in said questions and answers, but after cross-examination upon other subjects had progressed a day and a half. The motion to rule out, withdraw and exclude was made because, as stated to the Court when the motion was made, said questions and answers were immaterial, irrelevant, illegal, prejudicial, and dealing with other matters and things and crimes irrelevant and disconnected with the issue in the case then on trial.

Movant contends this evidence was highly prejudicial, and the failure of the Court, upon proper motion, to rule it out was a great injury to the defendant. And the failure of the Court to rule out said prejudicial and irrelevant and immaterial evidence is here assigned as error and a new trial should be granted because said evidence was illegal, irrelevant and highly prejudicial and involved other transactions not legitimately under investigation, and the same amounted to accusing the defendant of other and independent crimes.

11. Because the witness Conley, at the instance of the solicitor, was permitted to testify that he had seen Frank in a position with women that he had not seen any other man in that has children; that he had seen Frank in the office of the Pencil Company about two or three times before Thanksgiving and a lady was in the office and she was sitting down in a chair and she had her clothes up about her privates, and Frank was down on his knees, and she had her hands on Frank; that Frank saw Conley when he came out of the office, that when Frank came out of the office he was hollering "Yes, sir, that is right, that is right" and he said "That is all right, it will be easy to fix it that way;" that at another time he saw Frank in the packing room of the factory with a young lady lying on a table—she was on the edge of the table when he saw her.

While Conley was on the stand, and before he was crossed about seeing the circumstances testified about, and after cross examination upon other subjects had been had for a day and a half, counsel for the defendant moved the Court that the next above stated testimony of the witness Conley be ruled out, withdrawn and excluded from the jury, stating at the time that such motion ought to be granted, because the testimony was irrelevant, immaterial, illegal, prejudicial, and dealing with other matters and things, and crimes, irrelevant and disconnected with the issues in this case.

The Court declined to rule out, withdraw, or exclude this testimony from the jury, but permitted the same to remain before the jury.

The action of the Court was erroneous and highly prejudicial to the defendant, and demands a new trial.

Such action of the Court was error because said evidence was illegal, irrelevant and hurtful to the defendant and involved other transactions not legitimately under investigation, and the same amounted to accusing the defendant of other and independent crimes.

12. Because the witness Conley, when on the stand, testified that he watched for Frank, at the Pencil Factory, four times on Saturdays, not on the day of the murder, and once on Thanksgiving day, 1912, while Frank was with women in his office, detailing certain signals by which the witness Conley was to lock and open the door.

When the first question was asked by the solicitor seeking to elicit whether witness had ever seen Frank up there in his office doing anything with young ladies before April 26, 1913, the defendant objected on the ground that the

evidence sought was irrelevant and immaterial. The Court ruled that the evidence would be immaterial, but further questions were asked by the solicitor and elicited the evidence here complained of.

While Conley was still on the stand, and after cross examination a day and a half on other subjects, defendant's counsel moved to rule out, exclude and withdraw from the jury all the testimony, both direct and on cross, detailing Frank's associations with women and Conley's watching at other times than the Saturday of the murder, to-wit: April 26, 1913. Said motion was made upon the grounds stated and argued at the time the motion was made, that such testimony was immaterial, irrelevant, illegal, prejudicial, and dealt with other matters and things and crimes irrelevant to, and disconnected with, the issues on trial in this case.

The Court declined the motion made at the time upon the grounds, as stated, and in doing so erred, because the evidence sought to have been ruled out for the reasons stated, and the same amounted to accusing the defendant of other and independent crimes.

13. Because the Court, upon motion made when the witness Conley was still on the stand, declined to rule out, exclude and withdraw from the jury each and all the below questions propounded to witness Conley, and his answers thereto:

Q. Now, tell what kind of work you had done for him the other Saturdays.

A. I always stayed on the first floor, like I stayed on the 26th of April, and watched for Mr. Frank, while he and a young lady would be on the second floor chatting.

Q. You say chatting. Do you know what they were doing?

A. No, sir, I don't know what they were doing. He only told me they wanted to chat.

Q. Did you ever see him up there doing anything with young ladies?

A. Well, I have—

Q. Well, what would you do before when young ladies come there?

A. I would sit down on the first floor and watch the door for him.

Q. And watch the doors for him?

A. Yes, sir.

Q. How many times did you watch the door previous to Saturday, the 26th of April, 1913?

A. Well, I couldn't exactly tell you; it has been several times I watched for him.

Q. Who was there when you were watching the door?

A. Well, I don't know, sir, who would be there when I watched the door, but there would be another young man and another young lady there during the time I was at the door; a lady for him and one for Mr. Frank.

Q. Now, was Frank ever there alone?

A. Mr. Frank was there alone once, and that was Thanksgiving Day, that I watched for him.

Q. Well, do you know or not the lady—did any woman come there that day?

A. Thanksgiving Day?

Q. Yes.

A. Yes, sir.

Q. What kind of a looking woman?
A. She was a tall, heavy built lady.
Q. What did you do on that occasion?
A. I stayed down there and watched the door, just as he had told me to do this last time.
Q. Then what was done?
A. Well, after the lady came and he stamped for me, I went and unlocked the door as he said. He told me when he got through with the lady he would whistle, and when he whistled for me to go and unlock the door.
Q. That was on Thanksgiving day of what year?
A. Of last year, 1912. . . .
Q. He says: "What I want you to do, I want you to do, I want you to watch for me to-day as you have on other Saturdays."
A. And I says: "All right." . . .
And he says: "Now, when the lady comes, I will stamp as I did before."
Q. What did he mean?
A. I have seen Mr. Frank in the office there about two or three times before Thanksgiving, and a lady was in the office, and she was sitting down in a chair, and she had her clothes up to here (indicating), and Mr. Frank was down on his knees, and she had her hands on Mr. Frank, and I found them in that position.
Q. Well did you ever see him on any other occasion?
A. Yes, I have seen him another time there.
Q. What other occasion?
A. I have seen Mr. Frank in the packing room one time with a young lady laying on the table.
Q. How far was the woman on the table?
A. Well, she was on the edge of the table when I saw her. . . .
Q. Do you know the name of the woman that was up there with Mr. Frank?
A. Thanksgiving day?
Q. Yes.
A. No, sir. I don't know her name.
Q. Do you know the name of the other woman?
A. No, sir. I know the young man's name that was with one of the ladies, but I don't know the other lady's name. I know where she lives at.
Q. What is the name of the man?
A. That man's name is Mr. Dalton.
Q. Now, what kind of looking woman was it that you saw there Thanksgiving day in Mr. Frank's office?
A. Well, she was a tall built lady, heavy weight, she was nice looking, she had on a blue looking dress with white dots in it, and she had on a grayish looking coat with kind of tails to it. The coat was open like that (indicating), and she had on white slippers and stockings.
Q. Did Mr. Frank see you that time?
A. Thanksgiving day?
Q. Yes.
A. Yes, sir, he told me to come to the office—to come to the factory.
Q. When you come up into the office before Thanksgiving day now, when the lady was sitting in the chair?
A. Yes, sir. He saw me when he come out of the office, he saw me.
Q. What was said when they saw you?
A. When Mr. Frank come out of the office he was hollering: "Yes, that is right, that is right," and he said: "That is all right, it will be easy to fix it that way." . . .

CROSS EXAMINATION.

Q. Now, you said you watched for Mr. Frank?
A. Yes, sir.
Q. When was the first time you ever watched for Mr. Frank?
A. The first time I ever watched for Mr. Frank alone and knowed he was in the office—
Q. When was the first time you ever watched for Mr. Frank alone or with somebody else? Don't make any difference.
A. I couldn't exactly give you the—
Q. Tell us the best you can?
A. Some time during last summer, when I was watching for him.
Q. That was the first time, now?
A. Yes, sir.
Q. Whereabouts in the summer; what part of the summer did you do that watching that time?
A. Somewhere about in July.
Q. That's the first time; there was somebody with him that time?
A. Yes, sir. Somebody was with him all the time, off and on.
Q. Let's take the first time, now; what did Mr. Frank say to you that time; what did he say—what did he say to get you to watch for him?
A. I would be there sweeping, and Mr Frank come out and call me in the office.
Q. What?
A. I would be there sweeping and Mr. Frank come out and call me in the office.
Q. When was the first time he ever did that?
A. That was on Saturday he done that.
Q. He never had called you in there before when you were sweeping, except on Saturday?
A. He called me in there but never talked to me about that matter.
Q. Did he talk to you about anything?
A. Yes, sir.
Q. About what?
A. Sometime about the work, something like that.
Q. You mean during the week?
A. No, sir; he talked to me them Saturdays about it.
Q. When was the first time he called you in there to talk about the work or anything else?
A. How do you mean?
Q. On Saturday, when was the first time he called you in there to talk to you about the work or anything else on a Saturday?
A. I don't know about that.
Q. Tell us about that?
A. That was right after I started work there when he called me and talked to me about the work.
Q. And that was on Saturday?
A. Yes, sir; that was on a Saturday.
Q. About what time, now?
A. I don't know, somewheres about three o'clock, though.
Q. Sometime about three o'clock?
A. Yes, sir.
Q. What was your Saturday hours, Jim?
A. I always generally have to work from the time I get back there until half past four that evening.

Q. What time would you usually get back there?
A. I would leave away from there about half past twelve, ring out the clock, and come back about half past one or two o'clock.
Q. Would you ring in again?
A. Yes, sir; sometimes I would and sometimes I wouldn't. . .
Q. The first time you say you ever watched, you say you watched for Frank and somebody else last July?
A. Yes, sir.
Q. You don't know who the man was?
A. Yes, sir, I know who the man was.
Q. Who was he?
A. A man named Mr. Dalton.
Q. Where is he?
A. I don't know where he is now.
Q. How do you spell that?
A. I don't know how you spell it.
Q. What did he do?
A. A young lady that worked at the factory—I don't know what her name was—she would go off and get him and bring him in there.
Q. You don't know where he lived?
A. No, sir; I don't know where he lived, but I know where she lived.
Q. How come him to tell you who she was?
A. She was the one told me his name.
Q. Where is the young lady?
A. I don't know, sir, if she's anywhere in the room and if she'll stand up I can tell you if it is her.
Q. Give us her name?
A. I don't know, sir, what her name is; the detectives know her name; I don't.
Q. Did the detectives tell you who she was?
A. No, sir; they didn't tell me who she was, I described to them where she lives at.
Q. Where does she live?
A. She lives on West Hunter Street.
Q. Where?
A. Between Hunter and Haynes Street, around about Magnolia Street, down there.
Q. How come you to know she lived there?
A. Because I passed her house every morning.
Q. And the man was named Dalton?
A. Yes, sir.
Q. Who was with Mr. Frank?
A. The lady that was with Mr. Frank was Miss Daisy Hopkins.
Q. Where did she live?
A. I don't know, sir, where Miss Daisy Hopkins lived.
Q. Where did she work?
A. She worked up on the fourth floor.
Q. Do you know where she is now?
A. No, sir.
Q. Now, what time of day was that?
A. It would always be somewhere about three or three-thirty.
Q. Where did Mr. Frank tell you to watch, that time?
A. I would be up there sweeping, and Mr. Frank—

Q. That time—that particular time, I mean?
A. Well, I would be sweeping.
Q. I'm talking about that time—that particular time?
A. When he told me to watch?
Q. Yes, what did he say to you when he told you?
A. I'm going to explain to you now—
Q. That particular time, now?
A. Yes, sir.
Q. Give it to me, now?
A. I would be there sweeping—
Q. Oh, don't give me what you would be doing. I want to know about that particular time?
A. I was at the factory.
Q. Where?
A. Sweeping on the second floor.
Q. Now, what time was that?
A. Somewhere about three o'clock or three thirty.
Q. Somewhere about three or three-thirty?
A. Yes, sir.
Q. Then what happened?
A. Well, there would be one lady in the office.
Q. I am talking about that particular time, Jim—the first time he ever talked to you there, you were in the pencil factory?
A. Yes, sir.
Q. When Mr. Frank called you?
A. Yes, sir.
Q. You were on the second floor?
A. Yes, sir.
Q. Then Mr. Frank called you and then you went to Mr. Frank's office?
A. Yes, sir.
Q. Was there a woman in there with him?
A. Yes, sir, a lady was in there with him.
Q. Called you in the presence of the lady?
A. Yes, sir.
Q. Talked to you in the presence of the lady?
A. Yes, sir. He talked to me in the lady's presence.
Q. And that was Miss Daisy Hopkins
A. Yes, sir.
Q. And that was about three o'clock?
A. Or half past three.
Q. In July last?
A. Yes, sir.
Q. What did Mr. Frank say to you in that lady's presence? That's the time (first) time he ever talked to you about that matter, what did he say to you?
A. Yes, sir; he says: "Did you see that lady go out there?"—
Q. Why, I thought you said the lady was present?
A. Yes, sir. That lady was present. He would say: "Did you see that lady go out there?" I say: "Yes, sir," and he says: "You go down there and see nobody don't come up here, and you'll have a chance to make yourself some money."
Q. And the lady was present?
A. Yes, sir.
Q. Where was the other lady?
A. The other lady gone on out and to get that young man.

Q. She went with the man?
A. No, sir, she went out by herself to get the man and come back with the man.
Q. How long was she gone?
A. I don't know, sir, how long she was gone.
Q. And that was about half past three?
A. Yes, sir.
Q. The beginning of that transaction was about half past three?
A. Yes, sir.
Q. How long was she gone?
A. I don't know, sir, how long she was gone.
Q. You don't know how long she was gone?
A. No, sir; I don't know how long she was gone.
Q. Was she back after awhile?
A. Yes, sir.
Q. She came back after awhile and brought a man with her, and that man was Dalton?
A. Yes, sir.
Q. And Dalton's name you don't know?
A. Yes, sir; his name was Mr. Dalton.
Q. I know, but you don't know where he lives—nothing of that kind?
A. No, sir.
Q. When this young lady went off and came back and brought Dalton back, where did you see her again?
A. I saw her and Mr. Dalton when they come in at the door.
Q. You were watching then?
A. Yes, sir.
Q. Then where did they go?
A. Upstairs to Mr. Frank's office.
Q. Did you see them go to Mr. Frank's office?
A. I heard them walking in Mr. Frank's office.
Q. Then how long did they stay in Mr. Frank's office?
A. They didn't stay in there long, ten or fifteen minutes, I reckon.
Q. Then where did they go?
A. They came back down, and she says: "All right, James."
Q. Then his name was James Dalton?
A. No, sir; that was talking to me—said all right to me.
Q. You saw them go in the factory and heard them go to Mr. Frank's office, and how long did they stay there?
A. About fifteen minutes, I reckon.
Q. Then all of them came down together?
A. No, sir. They didn't all come down together—just this lady and Mr. Dalton.
Q. Then how long before Mr. Frank came down?
A. He was the last one that came down.
Q. How long?
A. About an hour after that.
Q. You never heard any of them come out of Mr. Frank's office after they went in?
A. Yes, sir; this lady and this man come back down.
Q. They came back and went down?
A. No, sir; they didn't go out. She came down and say: "All right, James," and I would say: "All right; and a place on the first floor that leads into another department, and after you get into this other department, there's

a trap door and stairway that leads down in the basement, and they pull out that trap door and go down in the basement.

Q. And that time, she came down and says: "All right, James?"
A. Yes, sir.
Q. She knew you?
A. Yes, sir.
Q. Because she worked in the office?
A. No, sir; she didn't work in the office; she worked on the fourth floor.
Q. Then you went through that door—a door right behind the elevator?
A. No, sir; there isn't a door back of the elevator; there's a big wooden door, just a step there.
Q. I know; but it goes back in the back there?
A. Yes, sir.
Q. Then you opened that door?
A. Yes, sir.
Q. Then came back and opened that trap door?
A. I came and pulled up the trap door.
Q. And then they went down there?
A. Yes, sir.
Q. She said "All right, James?"
A. Yes, sir.
Q. Then you went and opened that door?
A. Yes, sir.
Q. She didn't tell you to open it?
A. Yes, sir; she said, "All right, James"—something like that.
Q. She said "All right," and then you opened the door?
A. Yes, sir.
Q. What made you open the door?
A. Because she said she was ready. I knowed where she was going; Mr. Frank told me to watch.
Q. Mr. Frank told you to watch?
A. Yes, sir.
Q. But he didn't tell you where they were going?
A. Yes, sir, he told me where they were going.
Q. How came him to tell you that?
A. I don't know, sir.
Q. When did he tell you that?
A. That day.
Q. That they were going to the basement?
A. Yes, sir.
Q. That he was going to stay in his office?
A. He didn't say where he was going to stay.
Q. Well, he stayed there?
A. As long as I stayed there I didn't see him go out.
Q. She said all right, and went through that door?
A. Yes, sir.
Q. Opened it and they went down?
A. Yes, sir.
Q. You shut that trap door?
A. Yes, sir.
Q. And that was in July?
A. Yes, sir.
Q. And the first time that ever happened?
A. Yes, sir.

Q. First time anybody ever asked you or talked to you about it?
A. Yes, sir.
Q. Now, they went down the basement?
A. Yes, sir.
Q. How long did they stay there?
A. I don't know, sir, how long they stayed there.
Q. What became of them?
A. Well, they came back up.
Q. About what time?
A. I couldn't give no time, because I don't know what time it was when they went down there.
Q. Well, about what time?
A. I don't know, sir; I couldn't give you what time they came back up.
Q. It was after 3:30 when this whole thing started?
A. Yes, sir, it was after 3:30 when this whole thing started.
Q. He told you to go down; they came up after a while?
A. Yes, sir, they came up after a while.
Q. Came up the same way they went down?
A. Yes, sir.
Q. Up through the same door?
A. Yes, sir.
Q. You kept that door locked all the time?
A. No, sir, I didn't keep it locked; I just kept it shut and stayed there by it.
Q. Stayed there the whole time?
A. Yes, sir.
Q. And never left?
A. No, sir.
Q. Well, what did they do after they came up through the door?
A. After they came up through the door me and Mr. Dalton stood and talked at the steps. Mr. Dalton gave me a quarter and he went out laughing, and she went up the steps.
Q. Where did she go?
A. She went and stood at the top of the steps a little while first, before she ever went to the office.
Q. Did she go to the office?
A. Yes, sir, she went to the office.
Q. How do you know she did; you couldn't see her go there, could you?
A. No, sir, I couldn't see her go in the office, but I could hear her go there. I heard her walking in there.
Q. How long did they stay before they came down?
A. Didn't stay very long before they came down.
Q. What next happened?
A. They came down and left, and then Mr. Frank come down after they left away.
Q. What time did Mr. Frank leave?
A. I don't know, sir, what time Mr. Frank left—
Q. Give us the best you can?
A. Frank left some time about half past four, I believe.
Q. Then they stayed there an hour?
A. I don't know sir; I guess so.
Q. Then Mr. Frank left, and you locked the door and you left?
A. No, sir, I left before he did. He came down and gave me a quarter out of his pocket. He says: "Is that all right?" and I says, "That's all right," and then left.

Q. Then he came out behind you and left?
A. Yes, sir.
Q. Now, that's the first time?
A. Yes, sir.
Q. Now, when was the next Saturday?
A. The next Saturday was mighty near the same thing.
Q. Well, what was the next Saturday; I didn't ask you whether it was the same thing or not?
A. That was about two weeks after that.
Q. Was that in August or in July?
A. Well, it was about the last of July or the first of August.
Q. Well, do you remember the date?
A. No, sir, I don't remember the date at all.
Q. Where did you get your money that time; did you draw it?
A. Yes, sir, I drawed my money that time.
Q. Go up and draw it yourself?
A. I disremember whether I drawed it myself or not.
Q. Can't remember anything about that?
A. No, sir.
Q. The first time it happened, did you draw it yourself?
A. I can't remember whether I did or not.
Q. You can't remember that?
A. No, sir.
Q. Tell us the next Saturday. You think it was about two weeks after that?
A. Yes, sir.
Q. Now, when did Mr. Frank first mention it to you that Saturday? When did he first mention it, that Saturday, to you?
A. Mr. Frank mentioned it to me the same Saturday I was there.
Q. About three o'clock?
A. I don't know, sir, what time it was.
Q. About half past two, was it?
A. About half past two, I guess, that Saturday.
Q. About half past two, you think, that Saturday?
A. Yes, sir.
Q. Where were you then?
A. At the factory.
Q. Where?
A. I was through sweeping, up on the fourth floor.
Q. Mr. Frank came and got you?
A. No, sir, he told me that morning before ever they paid off.
Q. What time was that he told you?
A. I don't know, sir, it was near twelve o'clock when he did tell me.
Q. Where did he tell you that?
A. In the box room.
Q. Anybody else present?
A. No, sir, not as I knows of.
Q. What were you doing in there?
A. What was I doing in there, I was looking after the boxes.
Q. What did he tell you then?
A. He told me: "Now you know what you done for me last Saturday—"
Q. He told you: "You know what you done for me last Saturday?"
A. The other Saturday. I says: "Yes, sir, I remember." He says: "I want to put you wise to this Saturday." I says: "All right, sir, what time?" He says: "Oh, about half past" (?) I says: "All right, sir."

Q. You remember that distinctly?
A. Yes, sir.
Q. What time did he go to dinner that day?
A. I don't know, sir, what time he went to dinner that day; I wasn't there when he went to dinner.
Q. What time did he get back that day?
A. That was somewhere about quarter past two. I saw him going up the steps with his clothes and his hat on. I don't know where he had been.
Q. What was the next that happened?
A. He went in his office next that happened.
Q. Then what was the next that happened?
A. Mr. Holloway, he came on out.
Q. Mr. Holloway was there?
A. Yes, sir.
Q. That was half past two o'clock?
A. No, sir, it wasn't half past two.
Q. I thought you said he always left about half past two?
A. No, sir, I didn't say he always done it.
Q. Now, when was that; give us the best estimate about it?
A. It's pretty hard to give the best estimate about the time, because I wasn't looking at the clock at all.
Q. What was the next?
A. After Mr. Holloway left away Miss Daisy Hopkins come on in there.
Q. What happened next?
A. She came into his office.
Q. You heard her come into his office?
A. I saw her that time.
Q. Did she see you?
A. Yes, sir.
Q. Then what happened?
A. Well, Mr. Frank come out and popped his finger and bowed his head like that and went back in the office.
Q. Where were you at?
A. I was standing there by the clock.
Q. He popped his hand?
A. No, sir, he popped his finger.
Q. He popped his finger and bowed to you?
A. Yes, sir.
Q. Then you went down?
A. Yes, sir, then I went down.
Q. And stood by the door?
A. Yes, sir.
Q. Didn't lock it?
A. No, sir, I didn't lock it; I shut it.
Q. Then what next happened?
A. I don't know, sir, what next happened.
Q. Did you hear Mr. Frank come out of his office at all?
A. No, sir, I didn't hear Mr. Frank come out of his office at all.
Q. You could have heard him if he went out?
A. No, sir, I couldn't have heard him if he went out.
Q. Well, how comes it you could hear him go in there and not hear him come out?
A. Because I was up there on the floor when she went in there, in the office.

Q. When you went down, she was in Mr. Frank's office?
A. No, sir, I was standing at the clock and saw her go into Mr. Frank's office.
Q. Then you went down and watched?
A. Yes, sir, I went down and watched.
Q. Did you hear her come out of his office?
A. No, sir.
Q. Didn't you say a while ago that, while you were at the door, you heard these other people coming out of his office?
A. No, sir, I said this—this was what I said: after I got to the top of the steps I could hear them going into his office.
Q. I know but you said this lady went and got a fellow; you stood by the door and heard them going into his office.
A. No, sir, I said her and this man's footsteps I heard them go into Mr. Frank's office. I said I stood down at the door and watched.
Q. You were watching when they came in, didn't you say?
A. Yes, sir, I said I was watching when they came in.
Q. You could see them when they came in there?
A. Yes, sir, I could see them when they came in there, and I said I went up and heard the footsteps going in Mr. Frank's office.
Q. Didn't you sit there and watch all the time?
A. I didn't sit there at the door until he notified me to do that.
Q. I'm talking about the time she went and got that man and came back?
A. I was standing by the door, yes, sir.
Q. Stood there from that on?
A. No, sir, I didn't stand there from that on.
Q. What did you do?
A. I stood there about the trash barrel then.
Q. On the first floor?
A. Right there by the side.
Q. And then you heard them going back?
A. I heard them go to Mr. Frank's office, yes, sir.
Q. When you were standing at the door, you couldn't see them going into Mr. Frank's office?
A. No, sir, I couldn't see them go into Mr. Frank's office.
Q. Wasn't you at Mr. Frank's office at that time?
A. Not at the door, no sir, when you are at the door you ain't there at Mr. Frank's office.
Q. When do you hit his office?
A. When you hit that trash barrel.
Q. Now, did anybody else come that day?
A. This second time?
Q. Yes.
A. No, sir, nobody else didn't come.
Q. How long did Mr. Frank stay there that time?
A. I don't know, sir, how long he stayed there that time.
Q. About how long?
A. Stayed there that time about a half an hour, I reckon—something like that.
Q. Then the girl went out?
A. Yes, sir; then the girl went out.
Q. Mr. Frank came and went out?
A. No, sir, he called me up there then, asked me was I there; I told him yes sir, I was about through now.

Q. Did he know whether you were through or not?
A. I don't know, sir, whether he did or not.
Q. He gave you some money?
A. He gave me half a dollar.
Q. And the other time they didn't give you but a quarter.
Q. Then you left?
A. Yes, sir.
Q. Give the next time?
A. Pretty hard for me to remember.
Q. It was Thanksgiving Day, the next time, wasn't it?
A. No, sir, it wasn't Thanksgiving Day, the next time; I had watched for him and Mr. Dalton, too, before that Thanksgiving Day.
Q. Give us the best you can, of the next time?
A. That was somewhere along in the winter time; I don't know, sir, the exact time.
Q. Well, Thanksgiving time is winter time, ain't it, Jim?
A. Yes, sir, but this is before Thanksgiving.
Q. How many times before Thanksgiving?
A. I watched for him three times before Thanksgiving day.
Q. Well, you've given me two of these times?
A. Yes, sir.
Q. When was the next one—about when?
A. I don't know, sir; I couldn't exactly tell. Somewhere about the middle of August, I guess, or the last part of August.
Q. You said it was winter, didn't you?
A. Well, that's somewhere near the winter, ain't it?
Q. Mighty cold about the middle of August, ain't it?
A. I said it was somewhere—
Q. Beginning to be mighty cold about the middle of August, ain't it?
A. No, sir, not so cold.
Q. Pretty cold, though, ain't it?
A. No, sir, not so cold.
Q. But it's obliged to be cold, though, ain't it?
A. No, sir, not so cold.
Q. Pretty cool though?
A. No, sir, not so cold. Some days is cool.
Q. What made you say it was near winter, though, Jim?
A. It's near winter.
Q. All right, how did that happen. Just give it to me like it happened. What time did that happen?
A. I don't know, sir, what time it was that it happened.
Q. About what time?
A. Sometime after Mr. Frank come back from dinner; I don't know what time it was.
Q. About what time?
A. I don't know, sir.
Q. What did he tell you—he wanted you to watch that time?
A. He told me that time on the fourth floor.
Q. What time was that?
A. This was somewhere—I don't know, sir, what time; I couldn't exactly tell.
Q. It was morning or evening?
A. It was in the evening.
Q. About what time?
A. I don't know, sir, I couldn't tell you exactly.

Q. Where was you when he told you?
A. Right at the elevator.
Q. Was it before twelve o'clock?
A. I don't know, sir, whether it was twelve o'clock or not.
Q. After twelve?
A. I don't know whether it was after twelve or not.
Q. You don't know anything about that; you can't remember that?
A. No, sir.
Q. Anybody standing around there then?
A. There was Gordon Bailey standing there.
Q. That's Snowball?
A. Yes, sir.
Q. Anybody else there?
A. Not to my knowing, it wasn't.
Q. Wasn't the office force there at that time?
A. They were not standing at the elevator; they were back at work.
Q. It must have been before twelve o'clock then, if they were back at work?
A. I guess so; I don't know whether it was twelve or not.
Q. What did he tell you then?
A. He told me: "I want to put you wise again for to-day."
Q. "I want to put you wise again for to-day?"
A. Yes, sir.
Q. That is the same words he used every time?
A. He didn't use that every time, but he used that more often than anything else.
Q. What else did he say. He hadn't seen you but three times; hadn't watched for him but three times—two times before that?
A. Yes, sir.
Q. You say that's the word he usually used?
A. I don't know about the usual, but he used that the other two times.
Q. Up to that time he used the same words every time, that: "I want to put you wise." Is that correct?
A. Yes, sir, but he said sometimes in a funny way—
Q. Well, sometimes. But you said you hadn't watched but three times; and every time he said then: "I want to put you wise." He done that, didn't he, Jim?
A. And he would say that and say it in another way, too.
Q. But the three times, he said: "I want to put you wise?"
A. Yes sir, the three times he said: "I want to put you wise."
Q. And that was the three times—say it the three times up to that time?
A. Well, yes sir, to my remembrance it was.
Q. You don't know that then?
A. No, sir, I don't know that.
Q. Well, you said that though?
A. Yes, sir. I said it.
Q. Did he say anything else to you but "I want to put you wise" at that time and place?
A. Yes, sir, "I want to put you wise like I been doing the other Saturdays down there." I said: "All right, sir."
Q. All right, now, what time did that happen?
A. Well, just happen in the evening.
Q. About what time?
A. I don't know, sir, what time it happen.

Q. Give us the best estimate you have got?
A. Well, some time half past, I reckon.
Q. Sometime half past; half past what—half past two or half past three?
A. It was half past two, I reckon.
Q. He came back you say. What made him come; did he come back and hunt you?
A. No sir, he didn't hunt me.
Q. Where were you?
A. I was standing by the office when he got there.
Q. Then he came in there with you?
A. Yes, sir.
Q. What did he say to you?
A. He told me, he says: "She be here in a minute."
Q. Then where did you go?
A. I stayed there at the office.
Q. Did you see her come in there?
A. Yes, sir; I seed her come in there.
Q. Who was she?
A. She was a lady what worked on the fourth floor, but I don't know her name.
Q. The same woman?
A. No sir, she's not the same woman.
Q. Miss Daisy had been there twice, and this was a new woman?
A. Yes, sir.
Q. Does she work there now?
A. I don't know, sir, whether she is or not. I'm not working there, and I don't know who all's working there now.
Q. What kind of looking lady was she?
A. Nice looking lady, kinder slim.
Q. What kind of eyes did she have?
A. I don't know, sir, I never paid no attetion to her eyes.
Q. What kind of hair?
A. I don't know, sir, exactly—had hair like Mr. Hooper there got.
Q. How do you know Mr. Hooper so well; you seem to know him pretty well, don't you, Jim?
A. No sir, I don't know, sir; I have seen Mr. Hooper before.
Q. He had a good deal to do with you down there?
A. No sir; I seen him once when he come down to the cell to see me.
Q. Was she grey haired, like Hooper—you say she had hair like Hooper's?
A. Yes, sir, she had hair like Mr. Hooper's.
Q. Ain't that a grey-headed fellow, sorter measley and broken down with age?
A. Don't look like he's grey to me.
Q. You have been right close to him, too, haven't you?
A. I've been right close to him, but not to pay no attention to his hair.
Q. Well, she had hair like Hooper?
A. Yes, sir.
Q. If he's grey-haired, she had too?
A. Well, she had hair like Mr. Hooper's.
Q. Was she blonde or brunette?
A. I don't know, sir, what you mean by that?
Q. You don't know what a blonde is?
A. No, sir.

Q. You don't know what a brunette is?
A. No, sir.
Q. Did she have light hair?
A. She had hair like Mr. Hooper's.
Q. What sort of clothes did she have on?
A. She had on a green suit of clothes.
Q. Green all over?
A. As far as I could see.
Q. What kind of shoes and stockings did she have on?
A. I didn't pay no attention to her shoes and stockings.
Q. But Miss Daisy Hopkins, what sort of clothes did she have on the first time she came down there?
A. The first time that she came there she had on a black skirt and a white waist.
Q. What kind of shoes and stockings?
A. I didn't pay no attention to what kind of shoes and stockings she had on.
Q. Didn't you tell Mr. Dorsey what kind of shoes and stockings she had on?
A. No, sir, I told him the lady that was there Thanksgiving Day had on white shoes and stockings.
Q. Now the next day what did she have on?
A. The next day she had on the same thing, black skirt and white waist.
Q. She had on exactly the same thing?
A. Yes, sir.
Q. And this other—there was a girl dressed in green all over?
A. Yes, sir, there was a girl dressed in green all over, this last one.
Q. And you don't know who she is?
A. No, sir; she worked up there on the fourth floor, but I don't know her name.
Q. You don't know whether she works there now or not?
A. No, sir, I don't know whether she works there now or not. I haven't been there—
Q. She worked there when you left?
A. She had been there that morning; I don't know whether she was there that evening.
Q. And you saw her there?
A. Yes, sir.
Q. Did she have on a green dress that morning?
A. No sir, she didn't have on a green dress that morning.
Q. What kind?
A. A dirty black dress with paints on it.
Q. Well, they all have that, don't they?
A. Yes, sir, when they are at work.
Q. You didn't see her when she had her working dress off?
A. No, sir, I didn't see her that day when she had her working dress off.
Q. You never inquired who she was?
A. No, sir, I never inquired who she was because it wasn't none of my business.
Q. Did she speak to you?
A. No, sir.
Q. Well, she's the one, anyway?
A. Yes, sir.
Q. She was the other one?
A. Yes, sir.

Q. Now, Jim, don't everybody in that factory know Jim Conley?
A. No, sir, didn't everybody in that factory know me.
Q. Give me one of them?
A. I don't know, sir, I don't know whether they all knew me or not.
Q. Didn't the lady go up and down on the elevator at all?
A. No, sir, the girls never did.
Q. You swept on the fourth floor?
A. Yes, sir, I swept on the fourth floor a while.
Q. How long did you sweep on the fourth floor?
A. Been sweeping up there ever since last January.
Q. You saw that little girl every day, that went to meet Mr. Frank, didn't you?
A. This last one?
Q. Yes?
A. I didn't see her every day, but I seen her there.
Q. Saw her many times and didn't ask who she was?
A. No, sir, I didn't ask who she was.
Q. Don't know who she was?
A. No, sir, I don't know who she was.
Q. Now, when she came in, did she see you when she came in?
A. Yes, sir, she seen me when she come in.
Q. Where did she go?
A. She went to Mr. Frank's office.
Q. Then you went and watched?
A. Yes, sir, then I went and watched.
Q. You didn't see them leave nor hear them leave Mr. Frank's office?
A. No, sir, I didn't see them leave and I didn't hear them leave Mr. Frank's office.
Q. How long did you stay there?
A. Half an hour, I reckon.
Q. And she came out?
A. Yes, sir.
Q. What became of Mr. Frank?
A. He came out and left me up in the office and he went out somewhere, I don't know where he went, and then he came back and says: "That's all right, I didn't take out any money."
Q. He went out somewhere?
A. Yes, sir.
Q. You mean he went out in town somewhere?
A. I don't knew whether he went out in town or not.
Q. Didn't you open the door?
A. Yes, sir, I opened the door.
Q. Well, he went out of the factory?
A. Yes, sir.
Q. And then went back?
A. Yes, sir.
Q. And you stayed there waiting for him?
A. Yes, sir.
Q. What did you say he said?
A. He said: "I didn't take out that money, didn't you see I didn't?" I says: "Yes, sir, I seed you didn't." He said: "That's all right, old boy, I don't want you to have anything to say to Mr. Herbert or Mr. Darley about what's going on around here."
Q. He told you he didn't want you to tell Darley?
A. Yes, sir.

Q. And then the next time, now, was Thanksgiving Day?
A. Yes, sir, the next time was Thanksgiving Day.
Q. What hour was it Thanksgiving Day?
A. I don't know, sir, what hour; I met Mr. Frank there that morning about eight o'clock.
Q. Anybody else there?
A. I didn't see anybody else there.
Q. Where did you meet him, then?
A. I met Mr. Frank right at the door; I was sitting on the box when he come in.
Q. That's when he mentioned it to you again?
A. That's when he taken me on the inside and told me—
Q. Tell me the words.
A. After he went on the inside, he says: "How are you feeling?" I says: "I'm feeling all right, Mr. Frank." He says: "Come here," he says, "a lady will be here a little while, me and her going to chat. I don't want you to do no work; I just want you to watch."
Q. About what time was that?
A. Somewhere between eight and half past eight.
Q. Nobody there then?
A. I didn't see nobody.
Q. Where did you go then?
A. He went upstairs.
Q. He went upstairs?
A. Yes, sir.
Q. Where did you go?
A. I stayed down on the first floor.
Q. How long was it before the lady came?
A. I don't know, sir, somewhere about half an hour.
Q. Something about nine o'clock, that morning?
A. I don't know, sir, what time it was; it was about half a hour.
Q. Well, you said you got there about half past eight?
A. I said somewhere about eight and half past eight.
Q. Well a half hour, then, would be somewhere between half past eight and nine, the lady came?
A. Yes, sir, it was a half hour.
Q. Did you know that lady?
A. No, sir, I didn't know that lady. I had never seen her around the factory.
Q. She had never worked there?
A. No, sir.
Q. And you never saw her before nor since?
A. I think I saw her in the factory two or three nights before the Thanksgiving Day, in there in Mr. Frank's office.
Q. You didn't have any talk with her that night?
A. No, sir.
Q. Nor with Mr. Frank either?
A. No, sir; I had some talk with Mr. Frank about explaining about that clock.
Q. But about the lady?
A. No, sir, didn't say nothing at all about the lady.
Q. Now, you had, you say, seen her there a few nights before?
A. Yes, sir.
Q. Sitting in Mr. Frank's office, was she?
A. Yes, sir.

Q. What time?
A. Somewhere near eight o'clock.
Q. What did you have to do there?
A. I had to stack some boxes up on the fourth floor.
Q. Eighth floor? You had to stack some boxes?
A. No, sir, I said fourth floor.
Q. That was about Thanksgiving Day?
A. Yes, sir.
Q. Was it the same week of Thanksgiving you saw her up there?
A. I don't know, sir, whether it was the same week of Thanksgiving, but somewhere near Thanksgiving; it wasn't many days.
Q. How was she dressed that night?
A. I disremember how she was dressed that night.
Q. What sort of looking face did she have?
A. She was a nice looking lady.
Q. What kind of hair did she have?
A. I didn't pay no attention, because I didn't go that close.
Q. What sort of complexion?
A. I don't know, sir, I didn't get that close.
Q. You don't know what sort of clothes, nor what sort of shoes?
A. I think she had on black clothes.
Q. How tall was she?
A. She was a very tall, heavy built lady.
Q. You are certain of that?
A. Yes, sir.
Q. Then, between half past eight and nine, she came to the factory?
A. Yes, sir, between half past eight and nine o'clock.
Q. Where were you?
A. I was standing down on the first floor.
Q. Standing down on the first floor?
A. Yes, sir.
Q. Was the door open when she came?
A. The front door was open when she came.
Q. You closed it?
A. I closed it after he stamped for me to close it.
Q. He stamped that time?
A. Yes, sir.
Q. He didn't do it before?
A. No, sir, because I would be down there and know.
Q. You heard her go into his room?
A. Yes, sir, I heard her go (into his office).
Q. Where was he standing?
A. Standing by the trash barrel, smoking a cigarette.
Q. She went upstairs and went into Mr. Frank's office, and you heard her?
A. I heard her going towards Mr. Frank's office.
Q. You heard her go in there?
A. I couldn't hear them go in; I heard her going towards it.
Q. Didn't you say you heard those others go in?
A. No, sir, I said I heard them going towards the office.
Q. You didn't say you saw them go in?
A. No, sir, I said I heard them go toward it.
Q. And you didn't say you heard them go in?
A. No, sir, I said I heard them go towards the office.

Q. You didn't say you saw them go in?
A. No, sir, I said I heard them go towards it.
Q. And you didn't say you heard them go in?
A. No, sir, I said I heard them go towards his office.
Q. But you didn't see the others?
A. I don't remember saying I seen the others.
Q. Now she came, and she went up and went towards Mr. Frank's office, and he stamped?
A. Mr. Frank came out there and stamped.
Q. Where did he come to and stamp?
A. Came to the trash barrel where he told me—
Q. You mean upstairs?
A. Yes, sir, he was up on the second floor stamping.
Q. And you were on the first floor?
A. Right about the trash barrel.
Q. And you were on the first floor?
A. Right about the trash barrel.
Q. And he told you he was going to stamp?
A. Yes, sir, two times.
Q. And then he stamped?
A. Yes, sir.
Q. And then you closed the door?
A. Yes, sir, like he said so.
Q. How long did you stay there?
A. I didn't stand in the door after I closed the door. I came back and sat down on the box.
Q. How long did you stay there?
A. About a hour and a half.
Q. That would have been until about 10:30—about 10 o'clock that you stayed there?
A. I reckon so; I don't know how long exactly it was.
Q. Then the lady came down?
A. No sir, Mr. Frank says: "I'll stamp after this lady comes, and you go and close the door and turn that night latch."
Q. That was the first time he ever told you about the night lock?
A. Yes, sir.
Q. The other times, he told you just to close it?
A. Yes, sir.
Q. But that time he told you to put the night lock on?
A. Yes, sir; and he says: "I'll stamp, and if everything is all right, you take and kick against the door."
Q. And that time you kicked against the door?
A. Yes, sir, I kicked on the door.
Q. You didn't kick against the door the other times?
A. No, sir, because the ladies always went upstairs—
Q. Well, she went up then, too, didn't she?
A. Yes, sir.
Q. But he told you to stamp and everything would be all right?
A. No, sir, he didn't tell me to stamp and everything would be all right, he didn't say that. He said he would stamp, and for me to kick the elevator door if everything was all right.
Q. And then you stayed an hour and a half that time?
A. Yes, sir.

Q. Then the lady came down?
A. No, sir, Mr. Frank come down—
Q. He left the lady up there?
A. No, sir, Mr. Frank come down to the two doors and unlocked the doors and went on—come back, and says: "Everything all right?" I says: "Yes, sir." He went to the front door and fixed it hisself, unlocked the front door hisself, he went and looked up the street like that (illustrating) and come to the steps and taken the knob and turned it, there at the head of the stair door, and told her to "come on."
Q. He turned the knob and told her to come on down?
A. Went to the stair doors.
Q. Told her to come down?
A. Yes, sir.
Q. And she left?
A. No sir, she come down; and after she got to me, she says to Mr. Frank, "Is that the nigger?"; and he says: "Yes"; and she says: "Well, does he talk much"; and he says: "No, he's the best nigger I've ever seen."
Q. She stopped there and looked at you?
A. No, sir.
Q. Didn't you say she stopped and asked Mr. Frank: "Is that the nigger?"
A. She asked Mr. Frank that.
Q. She stopped and said to Mr. Frank: "Is that the nigger?"
A. No, sir, she didn't stop.
Q. She just kept walking?
A. Yes, sir.
Q. Neither stopped, neither of them stopped?
A. No, sir, neither of them stopped at all; she just said that—
Q. Said: "Is that the nigger," and just kept walking on?
A. Yes, sir, she kept on walking.
Q. And kept on walking off?
A. Yes, sir, she kept on walking, and—
Q. Just kept on walking, and Mr. Frank said: "Yes, that's the best nigger I ever saw?"
A. Yes, sir.
Q. You didn't see them stop at all?
A. No, sir, I didn't see them stop at all.
Q. Went out together?
A. No, sir, they never went out together.
Q. What did Mr. Frank do then?
A. Mr. Frank went up and opened the door and come back up stairs.
Q. How long did he stay there?
A. I don't know, sir, how long he stayed there.
Q. You left there?
A. He told me to go back in the office—
Q. You went in the office?
A. Yes, sir; he called me. I went in the office, and Mr. Frank come and gave me a dollar and a quarter.
Q. Give you $1.25 that time?
A. Yes sir, he gave me $1.25 that time.
Q. You went out then?
A. No, sir, I stayed there a little bit. He asked me where I was going that day. I says: I ain't going nowhere; I'm going on home." He says: "I'm going home directly, too." I says: "Is that all, Mr. Frank." He says: "Yes," and I left away.

Q. Where did you go when you left?
A. I went to the beer saloon over there on Hunter and Forsyth Street.
Q. How long did you stay there?
A. I don't know, sir; about an hour, I reckon.
Q. Then went home?
A. No, sir, I went to Peters Street and stayed a good while.
Q. Drank some more beer over there?
A. No, sir, I didn't drink no beer over there.
Q. Didn't drink but one beer that day?
A. I don't know, sir, how many I drank at that saloon on Forsyth and Hunter.
Q. About what time did you leave the factory?
A. I don't know, sir, it was a little before twelve o'clock, but I don't know what time.
Q. So the girl didn't come out of the factory that day until a little before twelve o'clock.
A. I don't know, sir, what time she come out of the factory that day?
Q. You said you saw her leave?
A. I said she stayed about an hour and a half.
Q. Well, what time did she leave?
A. I don't know, sir, what time.
Q. What kind of dress did she have on?
A. Blue skirt with white dots in it.
Q. She had on a blue skirt with white dots in it?
A. Yes, sir, and white slippers and white stockings, and had a grey tailor-made coat—what I call a grey tailor-made coat—looked to me like with pieces of velvet on the edges of it.
Q. What kind of velvet was it?
A. Black velvet.
Q. What color was the cloth that made the coat?
A. It was grey.
Q. Did she have on any jewelry?
A. I didn't notice her hands.
Q. What sort of a hat?
A. Had a black hat, with big black feathers over.
Q. What else?
A. That's all I paid any attention to.
Q. She had white shoes and white stockings?
A. Yes, sir.
Q. Then Mr. Frank said he was going to dinner, and you didn't go back any more that day?
A. No, sir, I didn't go back any more that day; I left him there at the office.
Q. You left him at about twelve o'clock?
A. Yes, sir, a little before that.
Q. And wasn't anybody else there that day?
A. No sir, ~~not while~~ I was at the office, I didn't see nobody else there that day.
Q. The next time, now?
A. Next time was Saturday when I watched.
Q. How long was that after Thanksgiving?
A. That's somewhere after Christmas, way after Christmas, when I watched for him.

Q. That was in the dead of winter, then?
A. Yes, sir, in the dead of winter.
Q. About when?
A. About January, I reckon.
Q. About the middle of January, or when?
A. I don't know, middle, first or last, I can't say—somewhere in January.
Q. How do you know it was somewhere in January?
A. Because it was right after the first of the year.
Q. Well, if it was right after the first of the year, you know what time it was in January?
A. I said somewhere about the first or middle.
Q. Well, was it in middle, or first, or last?
A. I don't know, sir, somewhere one of them parts; it was right after New Year, I don't know whether one or two days after.
Q. You couldn't tell any better than that?
A. No, sir, I couldn't tell any better than that.
Q. That was another Saturday?
A. Yes, sir, that was another Saturday.
Q. When did he first talk to you about that?
A. Well, I disremember when he first talked to me about that.
Q. You don't remember what he said to you?
A. No sir, I don't remember what he said to me.
Q. But you know you were down there watching; that's the only thing you can remember about that?
A. I can remember one thing,— He said—
Q. You said a minute ago you couldn't remember anything.
A. I couldn't remember anything about him telling me about the watching, but I can remember about him telling me about who was coming.
Q. What did he tell you?
A. Said it be a young man with two ladies.
Q. When did he tell you that?
A. That was Saturday morning.
Q. What time?
A. Soon Saturday morning.
Q. About what time?
A. I reckon about half past seven o'clock.
Q. Was Mr. Holloway there at that time?
A. No, sir, I had seen him, but I was on the elevator.
Q. He came and got on the elevator with you?
A. No, sir, I was standing by the side of Gordon Bailey, and he come and told me.
Q. You can't remember what he told you except he was going to have a man and two ladies after awhile?
A. Said: "A man and two ladies will be there this evening," and said I may can make some money off this man.
Q. Said what?
A. That I could get to make a piece of money off this man.
Q. That was all he said to you about that?
A. Yes, sir.
Q. Didn't tell you when they would come?
A. Said be there this evening about the same time.
Q. You didn't say that awhile ago when I asked you what he said, did you?
A. You cut me off so quick I didn't have time to say it.

Q. Well, I'm sorry I cut you off, I'll open it again and give you a better chance. That was about half past seven?
A. Yes, sir.
Q. What floor of the factory?
A. I can't remember now just what floor it was on.
Q. You didn't see anybody at the time, except Mr. Holloway?
A. I saw Gordon Bailey; me and him was on the elevator together.
Q. He was talking to you so Gordon Bailey could hear him?
A. I don't know, sir, I reckon he could hear; he was talking so he could hear.
Q. He was talking so Snowball could hear it?
A. Yes, sir.
Q. Just talking to you about meeting a woman and let Gordon hear it?
A. He said them words, yes sir.
Q. Right before Gordon?
A. Yes, sir.
Q. And you remember what floor it was on?
A. No, sir, I don't remember what floor it was on.
Q. He didn't say anything more to you after that?
A. No, sir, he didn't say anything more to me after that.
Q. Then what did you do that evening?
A. I went and got through cleaning up about quarter after two, and I went and stood at the door.
Q. He hadn't told you to stay at the door—just told you some woman was coming?
A. Told me two ladies and a young man coming, and I could make myself some money off this man.
Q. All right. Then you went and stood at the door.
A. Yes, sir.
Q. Was the door open?
A. One door was.
Q. Broad, open daylight?
A. Yes, sir.
Q. What time did the man and the ladies come?
A. Somewhere about half past two or three o'clock.
Q. About half past two or three o'clock they came?
A. Yes, sir.
Q. They come right in?
A. No, sir, they didn't come right in. The two ladies stayed back; the young man, he come in. He asked me was Mr. Frank in the office; he says: "Mr. Frank put you wise?" I says, "Mr. Frank put me wise, how?" He says: "Didn't he tell you to watch the door, two ladies and a young man would be here?" I says: "He didn't tell me to watch the door." He says "Two ladies and a young man would be here," and, he says, "Well, I'm the one."
Q. Him and Mr. Frank used the same terms, then. Frank says: "I'll put you wise"; and he said: "I'll put you wise"?
A. Mr. Frank didn't say it that day.
Q. Well, but he said it the other times?
A. Yes, sir.
Q. And the two ladies stayed out there and talked to you?
A. Yes sir; then he come and told them to come on.

Q. They went up to Mr. Frank's office?
A. I don't know, sir, where they went after that, after they went upstairs, I don't know where they went after they got upstairs.
Q. You were near enough, wasn't you, to see?
A. No, sir, I was at the door.
Q. You don't know which way they went?
A. I saw them when they turned that way, towards the clock.
Q. You say it was about half past two?
A. Yes, sir, it was about half past two or three o'clock.
Q. How long did they stay there that time?
A. Stayed there, looked like to me, about two hours, I reckon.
Q. Then half past two and that would make it half past four o'clock?
A. I don't know, sir, what time it would make it.
Q. Did you lock the door?
A. No, sir, I stood just inside the door.
Q. Nobody came in while you were there and nobody came out?
A. No, sir, didn't anybody come in while I was there and didn't nobody come out.
Q. Did you know either one of those ladies?
A. No, sir, I didn't know either one of those ladies.
Q. Give me a description of those young ladies?
A. Well, I disremember what the ladies did have on.
Q. Can't you remember what either of them had on?
A. No, sir, I can't remember what either of them had on; I didn't pay much attention.
Q. Can't describe either one of those women at all, can you?
A. No, sir.
Q. What sort of looking man was he?
A. He was tall, slim built, heavy man.
Q. Ever see him before?
A. I have seen him there talking to Mr. Holloway.
Q. Did he work there?
A. No, sir, he didn't work there.
Q. When did you ever see him there talking to Mr. Holloway?
A. Seen him quite often talking to Mr. Holloway through the week.
Q. Seen him quite often?
A. Yes, sir.
Q. Quite often?
A. Yes, sir, through the week, come there talking to Mr. Holloway.
Q. Give us a description of him?
A. Well, I said he was a tall man.
Q. Well, did he have black hair?
A. I couldn't see his hair; he had on a hat.
Q. Had light eyes?
A. I don't know, sir, what you mean by that.
Q. Did he have grey eyes or blue or black?
A. I didn't pay much attention to his eyes.
Q. You had seen him there frequently talking to Mr. Holloway, though?
A. Yes, sir.
Q. Where did he talk to Mr. Holloway at?
A. Sitting out on the bench up there.
Q. Did you hear any conversation between him and Mr. Holloway?
A. No, sir, I couldn't hear anything between them.

Q. Ever seen him since then?
A. I seen him since he was talking to Mr. Holloway then.
Q. But you don't know who he was?
A. No, sir.
Q. Ever saw the girl before or since?
A. No, sir, never saw the girls before or since, to my remembrance I haven't.
Q. Now, Jim, you were talking to me when we left off about the time you say you watched for Mr. Frank.
A. Yes, sir.
Q. Did you watch for him again?
A. In January, yes sir.
Q. Well I am talking about January. Is that the last time you watched for him until this time?
A. Yes, sir, I think it was—if I am not mistaken.
Q. Well, you ain't mistaken about it, are you Jim?
A. I don't know, sir, I couldn't tell you about that.
Q. You have no recollection of any other time?
A. No sir, no recollection of any other time.
Q. You have got no recollection, you can't remember it, if you did?
A. Well, I don't know, sir.—
Q. Now let us take that time about the middle of July you say you watched for him the first time. What did you do the Saturday before you watched for him the first time?
A. The Saturday before I watched for him the first time?
Q. Yes.
A. I disremember now, went ahead with my work, I guess.
Q. You have no recollection of that at all?
A. No, sir.
Q. Now, let us take the Saturday before you say you watched for him, what did you do that Saturday?
A. Well, I thought you said to take the Saturday before I had watched for him.
Q. Well, I did, and I will now take the Saturday after you watched for him the first time?
A. Well, the Saturday I watched for him the first time—I disremember.
Q. You can't remember what happened that day?
A. No, sir.
Q. Nothing on that day?
A. No, sir.
Q. Well, the next Saturday?
A. Well, I watched for him that Saturday.
Q. You say you didn't watch for him until three weeks?
A. That would make three weeks.
Q. One Saturday and two Saturdays make three?
A. That is what I call three, three times that I watched for him.
Q. One Saturday would be one week?
A. Yes, sir.
Q. The next Saturday would be two weeks?
A. Yes, sir.
Q. And the next Saturday would be three weeks?
A. Yes, sir, and the next Saturday would be three weeks.

Q. But I am not asking about that. I am talking about the second Saturday?

A. You asked me what I did the second Saturday, well, I don't remember.

Q. You mean you watched for him one Saturday and then the second Saturday you watched for him again?

A. Then the second Saturday after that I watched for him.

Q. You missed a Saturday?

A. Yes, sir.

Q. And then you watched the next Saturday?

A. Yes, sir.

Q. That is what you say about it now?

A. Yes, sir, that is what I say about it now and what I said before.

Q. Now the Saturday after you watched for him the second time, what did you do?

A. I don't know sir; I disremember what I did.

Q. You don't remember anything about what you did at all now that day, do you?

A. No, sir, I don't remember.

Q. And the Saturday after that. Do you remember anything about that?

A. Well, I don't know, sir, about the Saturday after that.

Q. Nor the Saturday after that?

A. Yes, sir, the Saturday after that, I think about the first of August, I did some more watching for him, somewhere along there.

Q. You did some more?

A. Yes, sir.

Q. Then you watched about the middle of July?

A. About the middle of July.

Q. And about the first of August; three times?

A. Yes, sir.

Q. Right there together?

A. Yes sir, not one Saturday right after the other Saturday, though.

Q. One Saturday after that you didn't watch?

A. Yes, sir.

Q. And the next Saturday you didn't watch?

A. My best memory, the next Saturday, then I watched again, yes sir.

Q. That is the way you remember it now?

A. Yes, sir. That is the way I had it before.

Q. But that is the way you now remember it?

A. Yes, sir.

Q. Now let me see if I have got that right. You watched one Saturday in July; the next Saturday you watched?

A. Yes, sir.

Q. And the next Saturday you did?

A. Yes, sir.

Q. And the next Saturday you didn't watch, and the next Saturday you did?

A. Yes, sir.

Q. That is the way you remember it now?

A. Yes, sir.

Q. You are certain that is the way it happened; that is your best recollection?

A. Yes, sir.

Q. Of course, you don't know except from your best recollection. Then you didn't watch for him until Thanksgiving Day?
A. Until Thanksgiving Day.
Q. What did you do the Saturday before Thanksgiving Day?
A. I don't remember what I did.
Q. What did you do the Saturday after Thanksgiving Day?
A. I don't know what I did.
Q. And the next Saturday?
A. Well, the next Saturday, I could tell you what I did that Saturday.
Q. And the next Saturday?
A. Well, I don't know, sir, what I did the next Saturday.
Q. And the next?
A. The next Saturday I did some watching for him, then.
Q. Let me see if I get that now. You watched Thanksgiving Day?
A. Yes, sir.
Q. The next Saturday you didn't watch, and the next Saturday you did?
A. I watched somewhere along about the last of September.
Q. That is your recollection?
A. Yes, sir, somewhere about the last of September, somewhere like that.
Q. That is your recollection?
A. Yes, sir, about the last of September—somewhere like that.
Q. Well, now, that is your best recollection?
A. I say somewhere about the last of September.
Q. Well, I gave it right, didn't I?
A. I don't know, sir, I can't count by the week.
Q. Well, did you say that?
A. No, sir.
Q. What did you say?
A. I said something like that.
Q. Well, that means you are doing the best you can to give me the best memory you have?
A. All right, sir.
Q. Isn't that correct, Jim? You and I don't want to misunderstand each other, now?
A. No, sir, we won't misunderstand each other.
Q. Well, is that correct?
A. I say some time about the last of September I did the last watching.
Q. That was after thanksgiving?
A. Yes, after Thanksgiving.
Q. In September after Thanksgiving is your recollection?
A. Yes, sir, after Thanksgiving Day.
Q. About the last of September?
A. After Thanksgiving Day, yes, sir.
Q. About the last of September?
A. After Thanksgiving Day, yes, sir.
Q. Now, Jim, you don't remember any of these dates?
A. No, sir, I don't remember any of these dates, I cant tell about them.
Q. Let us see how much money you drew that Saturday that you watched for him; how much money did you draw that day?
A. I don't know, sir.
Q. What time did you draw it?
A. I don't know, sir, what time I drew it.
Q. Did you draw it at all, or did somebody draw it for you?
A. Well, I don't know, sir, whether somebody drew it for me or I drew it.

Q. You don't remember about that?
A. No, sir.
Q. You have no memory at all about that?
A. No, sir.
Q. What time did you get home the first morning you watched for him?
A. I couldn't tell you to save my life.
Q. Nor what time you went home, you couldn't tell me?
A. No, sir, I couldn't tell you.
Q. You couldn't tell me anything at all about that?
A. No, sir.
Q. The second time you watched for him. Can you remember the time you got back to the factory?
A. No, sir, I couldn't tell you what time I got to the factory.
Q. Or what time you left to go home?
A. Well, I don't know, sir, what time I left to go home.
Q. You can't remember?
A. No, sir, I don't know what time I left to go home.
Q. Now the second Saturday did you draw your money—the second time you watched for him—did you draw your money on that day or not?
A. I disremember now.
Q. Did you draw it, or did somebody draw it for you?
A. I disremember.
Q. How much did you draw?
A. I don't know, sir.
Q. Now, that third time, on the day before Thanksgiving; that is, three times before Thanksgiving, according to your recollection?
A. Yes, sir.
Q. Now, did you draw your money that week?
A. Before Thanksgiving I couldn't tell you about that.
Q. You don't know whether you drew your pay or whether somebody drew it for you?
A. No, sir.
Q. Or how much you drew?
A. No, sir.
Q. You don't remember that, do you?
A. No, sir.
Q. When did you draw your pay, before or after Thanksgiving, that week of Thanksgiving?
A. The week of Thanksgiving when did I draw my pay?
Q. Before or after Thanksgiving Day?
A. Well, to tell you the truth, I disremember.
Q. You don't remember?
A. No, sir.
Q. You can't remember whether you drew your pay before or after Thanksgiving?
A. No, sir.
Q. Can you remember what day of the week Thanksgiving was?
A. No, sir, I don't remember.
Q. And you don't remember what time you got down in the morning or what time you left?
A. No, sir.
Q. You have no memory at all about that, have you?
A. No, sir.

Q. The day after Thanksgiving. Do you remember what you had been doing that day?

A. No, sir, but to my remembrance I think I came back to work the day after Thanksgiving.

Q. Are you certain about that, or have you any memory at all about it?

A. I think I came back to work.

Q. What time did you get there?

A. I don't know, sir, what time I got there.

Q. What time did you leave that day?

A. I don't know, sir.

Q. You can't remember anything about that?

A. No, sir.

Q. The day before Thanksgiving, what time did you go down to the factory that day?

A. I don't know, sir, what time I got to the factory that day.

Q. How many hours did you make that day?

A. I don't know, sir.

Q. When did you leave that day?

A. I don't know, sir.

Q. Who did you see at the factory that day, that you remember?

A. Well, I saw, I reckon, most everybody there.

Q. Well, who do you remember seeing there?

A. I remember seeing Mr. Frank.

Q. You do remember seeing Mr. Frank?

A. Yes, sir.

Q. The day before Thanksgiving?

A. Yes, sir.

Q. Did you see him the day after Thanksgiving?

A. Yes, sir, I saw him the day after Thanksgiving.

Q. You remember those two facts well?

A. Yes, sir, I remember those two.

Q. You saw Mr. Frank the day before Thanksgiving when you got there?

A. Yes, sir.

Q. And you saw him the day after Thanksgiving?

A. Yes, sir.

Q. Who else did you see?

A. Well, I don't remember now, who else I did see.

Q. You don't remember who else you saw?

A. No, sir.

Q. Did you see Mr. Darley?

A. I don't think I saw Mr. Darley.

Q. Who is the foreman in the place where you work?

A. Well, they have got foreladies there.

Q. Who is the forelady?

A. One was Miss Clark and Miss Willis.

Q. In the place where you work, where is that?

A. On the fourth floor.

Q. Did you see either one of them there that day?

A. I don't remember.

Q. Let us take the first Saturday you said you watched for him. How many hours did you make that day?

A. I don't know, sir, how many hours.

Q. You can't remember anything about that?

A. No, sir.

Q. Or the second day, do you know how many hours?
A. No, sir.
Q. Nor the third?
A. No, sir.
Q. Or Thanksgiving?
A. No, sir.
Q. Do you know how much you were paid for either one of those days?
A. Yes, sir, I can tell you what I was paid Thanksgiving Day when I watched for him.
Q. Well, you know that was $1.50?
A. No, sir, I said it was $1.25.
Q. Well, outside of the factory, do you remember what you got for your services?
A. Outside of the factory, I remember once I got a half a dollar; then, again, I remember getting half a dollar.
Q. That is when you were watching for him, you say?
A. Yes, sir.
Q. And you got how much on Thanksgiving Day?
A. I got $1.25.
Q. The day before that?
A. The day just before that, I don't remember just how much I got from him that day.
Q. The Saturday before that?
A. You mean for watching?
Q. Yes.
A. Well, the Saturday before that I don't know, sir, what I got that Saturday. I don't think I done any watching that Saturday.
Q. Well, you watched three Saturdays before Thanksgiving?
A. Yes, sir.
Q. And then you watched again about the last of September?
A. Yes, sir.
Q. How much did you get the first time?
A. The first—
Q. But let us take them up the other way. How much did you get the first Saturday before Thanksgiving? How much did he pay you then?
A. I remember getting 75 cents then; 50 cents from him and a quarter from the other man.
Q. Well, the next time?
A. The next time I remember getting 50 cents.
Q. The next time?
A. I remember getting 50 cents then.
Q. But you don't know how much you got for your regular work for any of those days?
A. No, sir.
Q. You can't remember anything about that?
A. No, sir—
Q. The first day you said you watched for Mr. Frank, was Snowball there that day?
A. No, sir, Snowball was not there.
Q. You didn't see him?
A. No, sir, I didn't see him. I think he laid off.
Q. How about the next day?
A. I don't remember about the next day. I don't remember whether I seen Snowball there on the next day or not. I don't remember about where he was.

Q. Well, the third one; was Snowball there that day?
A. I disremember about the third Saturday.
Q. Well the next one was Thanksgiving. Did you see him Thanksgiving morning?
A. I didn't see him Thanksgiving morning, but I saw him the day before Thanksgiving.
Q. That is the time when you heard Mr. Frank talking in the presence of Snowball?
A. Yes, sir.
Q. He didn't hesitate to talk for Snowball?
A. No, sir.
Q. He talked before Snowball just like he did before you?
A. Yes, sir.
Q. The first time he did that was Thanksgiving Day, that he talked before Snowball?
A. Not Thanksgiving Day, no, sir.
Q. The day before Thanksgiving?
A. Yes, sir, the day before.
Q. When was that when you and him and Snowball were talking together?
A. I don't know what time it was.
Q. You don't know what time that was?
A. No, sir, I don't know what time it was.
Q. You don't know what time that was?
A. No, sir; I don't know what time it was.
Q. Was it in the morning?
A. Yes, sir, somewhere along in the morning.
Q. Or in the afternoon?
A. It was somewhere in the morning.
Q. About what time in the morning?
A. I don't know, sir, what time it was; I reckon somewhere before 12 o'clock.
Q. Was Snowball the elevator man?
A. Yes, he was running the elevator that day.
Q. The date you don't remember, but it was sometime in September, before Thanksgiving Day?
A. Yes, sir.
Q. The day before Thanksgiving?
A. Yes, sir.
Q. And Snowball was the elevator man at that time?
A. No, sir.
Q. How came him to be running the elevator?
A. Because he wanted me to swap places with him, and I wouldn't do it; and he went to work and swept some trash in the box, and I had to sweep it out.
Q. You were the elevator man?
A. Yes, sir.
Q. But he was running it?
A. Yes, sir, he was running it then.
Q. Did Mr. Frank say anything about Snowball running it instead of you?
A. No, sir, he didn't say a word.
Q. It didn't attract his attention at all?
A. No, sir, didn't attract his attention at all.

Q. How long had Snowball worked at the factory?
A. I don't know, sir—
Q. Now, that time when you watched in January, was Snowball there that day—I believe you said it was in January?
A. Yes, sir, I said I watched one time in January.
Q. Well, was Snowball there?
A. I don't know whether he was or not?
Q. Now, the only time you ever heard Mr. Frank say anything in front of Snowball was that time you have just mentioned? Thanksgiving, is that what you said?
A. Yes, sir.
Q. You heard him say something before Snowball then?
A. One time was in January.
Q. Where was that, in January?
A. He said that in the box room. In the box room, he told me.
Q. Snowball was in there?
A. Yes, sir, he was helping me to stand the boxes.
Q. Snowball was in there?
A. Yes, sir, he was helping me to stand the boxes.
Q. He walked up there and told you before Snowball?
A. I don't know whether he knew Snowball was there or not.
Q. Was he close to Mr. Frank?
A. No, sir, Snowball was sitting up in the rack.
Q. Was he in sight, or not?
A. Yes, sir, he was in front of the little partition, between me and Mr. Frank.
Q. You could see him, could you?
A. No, sir, I couldn't see him from where he was standing, but I knowed he was there.
Q. Mr. Frank wouldn't hide it from Snowball; he would talk before Snowball all right?
A. I don't guess he would if he had seen him.
Q. Tell a single one he has ever talked to you about, except business, before that first time you watched for him. Give us the day and time he ever talked to you, and what he talked about?
A. I couldn't give you the day or time about that at all.
Q. Give the day when he ever jollied with you, prior to the time he talked to you the day before he talked to you the day before you watched for him?
A. I couldn't give you the date. I couldn't tell you the date about it at all—
Q. How long was that before the day you watched for him?
A. I don't know, just directly after Mr. Darley had come there.
Q. That was after he had that talk with you that you are talking about?
A. After he had what talk with me?
Q. The one that he had with you in the elevator?
A. Yes, sir, that was after that time.
Q. The first time you ever saw him have any talk at all with Snowball, except on business, was that day he talked about that girl right before you and Snowball?
A. Yes, sir, that was the first day.
Q. That is the first time?
A. Yes, sir, the first time I saw him talk in front of Snowball.

Q. He just come in there and commenced talking to you, and paid no attention to Snowball?

A. He didn't know Snowball was in there.

Q. In the elevator. How could he help seeing him if he was in the elevator?

A. The elevator was gone down. Whenever I would get ready to work at night, he would send the elevator to the basement, and we would go in the back room.

Q. You were not on the elevator when you had that talk?

A. No, sir, that talk was in the back room.

Q. I am talking about just before Thanksgiving. You were in the elevator that day?

A. Yes, sir, we were in the elevator then. I was standing right there beside the elevator.

Q. Well, Snowball was standing right there by you?

A. Snowball was standing right there by me, yes, sir.

Q. He could have seen him, Mr. Frank, couldn't he?

A. Yes, sir, he was where he could have seen him, and he was where he could have heard anything that was said.

Q. And Mr. Frank knew that he could have heard anything that was said?

A. Yes, sir, he knew he could have heard anything that was said.

Q. He saw Snowball standing there?

A. Yes, sir, he saw Snowball standing there.

Q. Well, take last Thanksgiving Day. How many was there?

A. This gone Thanksgiving?

Q. Yes.

A. I don't know; there was a big crowd.

Q. When did Miss Daisy Hopkins work there?

A. Oh, she worked in 1912.

Q. 1912?

A. Yes, sir.

Q. You are certain of that?

A. Yes, sir, I am certain she worked there in 1912.

Q. What floor did she work on?

A. She worked on the fourth floor.

Q. The fourth floor?

A. Yes, sir.

Q. And she worked there in 1912?

A. Yes, sir.

Q. What time in 1912 did she quit there?

A. I don't know what time.

Q. About when, Jim?

A. I don't know when she quit there.

Q. What time of the year did you see her working there?

A. I saw her working there in 1912.

Q. What part of the year?

A. Well, I saw her working there from June on up.

Q. June on up?

A. Yes, sir, up until about near Christmas.

Q. All right, you saw her working there from June or July of 1912 until Christmas?

A. Yes, sir.

Q. Or about that time?

A. Yes, sir.

Q. And she worked on the fourth floor?
A. Yes, sir, she worked on the fourth floor.
Q. Has she worked there in 1913?
A. I don't know; I don't remember seeing her there; I don't know whether she has worked there in 1913 or not.
Q. You can't remember that?
A. No, sir, I can't remember that.
Q. You worked on the same floor with her, didn't you?
A. I didn't work with her at all. I worked on the same floor.
Q. And you don't know whether she worked there in 1913 or not?
A. No, sir, I don't remember.
Q. But you know she worked there from June until about Christmas?
A. Yes, sir, I know she worked there from June until about Christmas.
Q. You are very certain of that?
A. Yes, sir.
Q. Do you know when Miss Daisy left—Miss Daisy Hopkins?
A. No, sir.
Q. You don't remember when she left?
A. No, sir, I don't remember that.
Q. Was she married or a single lady?
A. I don't know.
Q. Now, describe Miss Daisy to us?
A. Well, Miss Daisy she was low lady, kind of heavy, and she was pretty; low, chunky, kind of heavy weight, and she was pretty.
Q. Can't you give a better description of her than that?
A. No, sir, that is the best I can give of her.
Q. What sort of color hair did she have?
A. Well, I don't remember what color hair she had.
Q. What color eyes?
A. I didn't pay no attention to her eyes.
Q. What sort of complexion?
A. What do you mean by complexion?
Q. Well, don't you know what complexion means?
A. No, sir, not complexion.
Q. You don't?
A. No, sir.
Q. You are dark complexion and I am white?
A. Yes, sir.
Q. Well, with that definition?
A. She was white complexion.
Q. Well I know, but was she fair, or brunette, or was she blonde, or what was she?
A. I don't know nothing about no brunette.
Q. Was she dark skinned, or fair skinned, for a woman. I know, of course, she was a white woman; but there are some dark skins and some light skins, aren't there?
A. Yes, sir, there is some dark skins and some light skins.
Q. Which was she?
A. She was light skinned.
Q. She was light skinned?
A. Yes, sir.
Q. But you don't remember what sort of hair; what sort of nose did she have?
A. I didn't pay any attention to her nose.

Q. What sort of ears did she have?
A. She had ears like people.
Q. Like folks?
A. Yes, sir.
Q. I didn't expect her to have them like a rabbit; and she didn't have, did she?
A. No, sir, she didn't have ears like a rabbit.
Q. Well, did she have large or small ears? —Do you remember that?
A. No, sir, I didn't pay any attention to her ears, whether they were large or small.
Q. You can't give any description of her at all now, can you, Jim?
A. I can't give a description of her, except she was a white lady.
Q. You say she was a white lady?
A. Yes, sir, and she was low and chunky.
Q. How old was she?
A. I don't know how old she was.
Q. How old did she look to be?
A. She looked to be like about 23 years old.
Q. About 23 years old?
A. Yes, sir.
Q. Was she working there when you went there or not?
A. I don't know.
Q. You don't know.
A. No, sir.
Q. The only time you can remember was that she worked from June, 1912, until Christmas, 1912?
A. Yes, sir, that is it.
Q. You can remember that?
A. Yes, sir, or near about Christmas.
Q. You can remember that?
A. Yes, sir, or near about Christmas.
Q. Now, the very first time you ever saw Miss Daisy Hopkins was some time in June, 1912?
A. Yes, sir.
Q. The first day you ever knew she was there was the day that note was sent down?
A. Yes, sir.
Q. The first day you ever knew she was there was the day that note was sent down?
A. Yes, sir.
Q. You don't remember ever to have seen her there before that?
A. Yes, sir, I remember seeing her there after that time.
Q. I said before?
A. No, sir, I don't remember seeing her there before that time.
Q. That is the way you fix it now, how do you fix the time she left there?
A. How do I fix the time she left there during Christmas?
Q. That is what I want to know?
A. Because Mr. Dalton told me she wasn't coming back.
Q. Mr. Dalton told you?
A. Yes, sir.
Q. Did Mr. Dalton work there?
A. No, sir, he didn't work there.
Q. Where does Mr. Dalton work?

A. I don't know where Mr. Dalton works at.
Q. When Mr. Dalton told you Christmas that she was going away, where was Mr. Dalton?
A. He was there.
Q. I know, but where was he when he told you that?
A. He was coming out of the factory.
Q. When was that?
A. It was Saturday; I don't know the date.
Q. You don't remember the date?
A. No, sir.
Q. You don't remember the date now?
A. No, sir.
Q. You don't remember his name?
A. I know his name was Dalton.
Q. What else besides Dalton?
A. No, sir, I don't know his first name.
Q. You don't know where he lived?
A. No, sir.
Q. Or where he works?
A. No, sir.
Q. Describe Mr. Dalton to me?
A. Do what?
Q. Tell me what kind of a looking man Mr. Dalton was?
A. He was a slim looking man, and tall with it.
Q. A slim looking man, and tall with it?
A. Yes, sir.
Q. And what else?
A. That is all I can tell you about him.
Q. You can't give any other or better description?
A. No, sir; his eye lashes seemed to be a little thick.
Q. Eye lashes thick?
A. Yes, sir.
Q. What was the color of his eye lashes?
A. I disremember now what color his eye lashes was.
Q. What was the color of his hair?
A. His hair was black, I think; I am not sure.
Q. Are you certain?
A. No, sir, I am not.
Q. You are not certain about that?
A. No, sir.
Q. What sort of complexion did he have?
A. What kind of complexion?
Q. Was he light complexion, or dark complexion? Was he darker or lighter complexion than I am?
A. He was just about your complexion.
Q. About my complexion?
A. Yes, sir.
Q. Well, would you call me a light complected man or a dark complected man?
A. I could call you a light complected man.
Q. Light?
A. Yes, sir.
Q. How much did Mr. Dalton weigh—about how much?
A. I don't know; about 135 pounds.

Q. About how tall was he—would you say he was?
A. Well, he was tall; I guess he was about as tall as that young man sitting there.
Q. About as tall as this man (indicating Mr. Arnold)?
A. Yes, sir.
Q. Weighing about as much?
A. I don't know whether he would weigh as much as that man, or not.
Q. Does he look like he would weigh about that much?
A. Yes, sir, he looks like he would weigh about that much.
Q. Then he was about the size of Mr. Arnold, Mr. Dalton was?
A. Yes, sir, just about that size.
Q. How old a man did Mr. Dalton look to be?
A. He looked to be a man somewhere about 35 years old.
Q. About 35 years old?
A. Yes, sir.
Q. You don't know where he lived?
A. No, sir.
Q. You don't know anything about that?
A. No, sir, I don't know where he lived at.
Q. How many times did you ever see him?
A. I don't know about that.
Q. Did you see him around the factory?
A. I saw him around there, coming around the factory after a girl.
Q. Did you ever see him any other place except around the factory?
A. No, sir, I never saw him anywhere except around the factory.
Q. How many times did you see him around the factory?
A. Several times I saw him there.
Q. About how many?
A. I don't know.
Q. You saw him one time coming out with a girl; what was he doing the other times you saw him?
A. The first time I saw him he was going out with a lady that he brought in there.
Q. That is the time you have done told about?
A. Yes, sir.
Q. What date was that, about when?
A. That was on Saturday.
Q. Well, about what month?
A. Somewhere along in June.
Q. Somewhere along in June or July?
A. July.
Q. Sometime in July?
A. Yes, sir.
Q. That is the first time you ever saw him?
A. Some time about the last of July.
Q. Where did you see him then?
A. Around at the factory.
Q. What was he doing then?
A. He come there with a lady.
Q. That same one?
A. Yes, sir.
Q. That same lady?
A. Yes, sir.
Q. You have done told about that this morning?
A. Yes, sir.

Q. When did you see him again?
A. I saw him again about two weeks after that.
Q. What was he doing then?
A. I just met him in the door then.
Q. Met him in the door?
A. Yes, sir.
Q. What date was that, about when?
A. I don't know; it was on a Saturday; I disremember the time.
Q. That is the time you have already talked about. You have done told about that?
A. Yes, sir, I have done told about it.
Q. This morning?
A. Yes, sir.
Q. What month was that?
A. I don't know; somewhere about the last of August, I reckon.
Q. About the last of August, you reckon?
A. Yes, sir.
Q. When did you see him again?
A. I didn't see him no more, I don't reckon, until along about up to that Thanksgiving time.
Q. Where did you see him then?
A. I saw him there, coming in there with a lady.
Q. That is the same Thanksgiving Day you have already told about?
A. Yes, sir.
Q. He come in there Thanksgiving?
A. No, sir, I didn't say Thanksgiving; it was before Thanksgiving. I said before Thanksgiving.
Q. When did you see him again?
A. No more then until after Christmas.
Q. Then where did you see him?
A. I saw him there to the factory with a lady.
Q. Did you ever see him anywhere else, except those times coming out of the factory?
A. No, sir, that is all.
Q. You saw him about Christmas?
A. Yes, sir, I saw him coming into the factory.
Q. You said until after Christmas?
A. I said this last time, I didn't see him no more until after Christmas.
Q. It was Christmas?
A. I didn't see him on Christmas day.
Q. About what time did you see him?
A. Sometime along in January.
Q. Somewhere along in January?
A. Yes, sir.
Q. Who did he come out with?
A. He came out that time by himself.
Q. By himself; where had he been?
A. Him and the lady was down in the basement.
Q. Down in the basement?
A. Yes, sir.
Q. Do you know who she was?
A. I don't know her name, but I know her face, and I know where she lives.
Q. How long since you have seen Mr. Dalton?
A. Well, I haven't seen Mr. Dalton now in about a month or more.

Q. Where did you see him the last time?
A. The detectives brought him down there to the station house, and said had I ever seen him about in there.
Q. And you told them what you knew?
A. Yes, sir, I told them about what I knew.
Q. And you haven't seen Mr. Dalton since then?
A. No, sir.
Q. Now, Jim, how was Mr. Dalton dressed the first time you ever saw him?
A. Well, I disremember now how he was dressed.
Q. Can't you give us any help about that at all?
A. All I can remember him having on, I think, was a brownish looking suit of clothes.
Q. What sort of hat did he have on?
A. I didn't pay no attention to his hat.
Q. What sort of shoes did he have on?
A. I didn't pay no attention to the shoes.
Q. When was the next time you happened to see him?
A. The next time I saw him.
Q. What sort of clothes did he have on then?
A. I disremember. I didn't pay no attention to his clothes.
Q. The next time, what did he have on?
A. I don't know what he had on the next time; I didn't pay no attention to that.
Q. And the next time?
A. I didn't pay no attention to his clothes that time.
Q. The last time you saw him, what did he have on?
A. I didn't pay no attention to his clothes the last time.
Q. You can't tell me anything about what sort of clothes he ever wore, except the one time that he had on a brown suit?
A. Yes, sir, he lobked like a man that had just got off from work and put on clothes enough so as to go through the streets.
Q. He had on a brownish suit?
A. Yes, sir.
Q. Did he have any mustache the first time you ever saw him?
A. No, sir, he didn't have any mustache.
Q. Did you ever see him with any mustache?
A. Not to my knowing.
Q. You know you saw him?
A. Yes, sir, I know that I saw him, but I didn't pay no attention to his mustache.
Q. Did he have any whiskers?
A. No, sir, he didn't have any whiskers.
Q. And you don't remember whether he ever had any mustache?
A. No, sir, I can't remember whether he had a mustache or not.
Q. You wouldn't want to say about that?
A. No, sir, I wouldn't want to say about that, because I don't remember about that.
Q. Now, take the first day you said you waited there for Mr. Frank. Did you see anybody, Mr. Darley, that day about the factory, or Mr. Holloway?
A. The first Saturday?
Q. Yes.
A. Yes, sir, I saw Mr. Holloway there on the first Saturday.

Q. What time did he leave there?
A. Well, I don't know. He left away from there somewhere about two or half past two, I reckon.
Q. Well, don't reckon, please; tell what you remember?
A. He left away from there about two or half past two, all right; I couldn't say just what time it was.
Q. You don't know what time it was?
A. He generally stayed—
Q. Not what he generally did; but on that particular day—that day, what time did he leave—the first time you said you waited for Mr. Frank?
A. He left away from there somewhere about two or half past two.
Q. Do you remember it?
A. Yes, sir, I can remember it.
Q. Did you see Mr. Darley that day?
A. I saw him that morning.
Q. Well, now, what time did he leave?
A. I don't know what time he left.
Q. Well, now, why can't you tell when he left the factory, if you know when Mr. Holloway left?
A. Because I always met Mr. Holloway when he was leaving, because he was always leaving, too.
Q. Always leaving?
A. Yes, sir.
Q. You don't know how late he stayed there that day, do you, nor whether he came back or not?
A. No, sir, I don't know whether he came back or not.
Q. The next time you watched, did you see Mr. Holloway that day?
A. The next Saturday I watched, I don't think Mr. Holloway was there; the next Saturday he was sick.
Q. You don't think you saw him?
A. No, sir, I don't think I saw him.
Q. He was sick?
A. He was sick that Saturday.
Q. He was sick on that Saturday?
A. Two Saturdays in June.
Q. He was sick one Saturday when you watched?
A. Yes, sir.
Q. About what date was it; about what date was it when you watched, when he was sick?
A. It was somewhere about three o'clock, I reckon.
Q. What month was it that old man Holloway was sick when you watched?
A. I don't know whether he was sick or not; they told me he was sick.
Q. You said he was sick?
A. They told me he was sick.
Q. They reported to you that he was sick?
A. Yes, sir.
Q. What date was that?
A. It was about the last of July, the first or last—or something like that.
Q. What date was it?
A. It was the last of July or first of August, or something like that.
Q. You said he was sick again. When was he sick again?
A. He was sick again up in this year.

Q. This year?
A. Yes, sir.
Q. I am not talking about that. Did you see Mr. Darley that time when Mr. Holloway was sick?
A. When Mr. Holloway was sick, I disremember now whether I seen Mr. Darley that day or not.
Q. Did you see Mr. Schiff that day?
A. I disremember whether I saw Mr. Schiff or not.
Q. You disremember that?
A. Yes, sir.
Q. Did you see anybody that day?
A. Yes, sir, I seen somebody that day.
Q. Who?
A. I saw Mr. Frank that day for one person.
Q. I know; but outside of Mr. Frank, who else of the office force did you see that day—anybody or not?
A. The office force; well, I disremember now.
Q. You disremember now?
A. Yes, sir.
Q. Well, now, the next time you watched there, that was Thanksgiving, wasn't it?
A. No, sir, that was before Thanksgiving.
Q. Before Thanksgiving?
A. Yes, sir.
Q. About what time?
A. Well, it was somewhere about the last of August.
Q. Last of August?
A. Yes, sir.
Q. Well, now did you see anybody there that day? Was Mr. Holloway sick that day, too? He was sick that day, too, wasn't he?
A. No, sir, he wasn't sick that day.
Q. Did you see him.
A. Yes, sir, I saw him that day.
Q. What time did he leave that day?
A. I don't know; he left about two o'clock, I reckon.
Q. Don't reckon, please, Jim; tell us if you have any memory about it, say so; and if you haven't, say you haven't, please.
A. He left away from there about two o'clock.
Q. Then, awhile ago you said about half past two, and now you state two?
A. No, sir, I said he left away from there about half past two the first time.
Q. And this time, what time did you say he left?
A. I said he left away from there about two.
Q. About two o'clock?
A. Yes, sir, that time.
Q. Did you see Mr. Darley that day?
A. I disremember whether I did or not.
Q. You disremember that?
A. Yes, sir.
Q. The next time was Thanksgiving day—that you watched for him?
A. The next time I watched for him—
Q. Was Thanksgiving Day?
A. Was the last day, the last of September, behind Thanksgiving Day.

Q. That was behind Thanksgiving Day?
A. Yes, sir.
Q. Before or after Thanksgiving, Jim?
A. This here was before Thanksgiving.
Q. Haven't you said half a dozen times that you watched in September, and that was after Thanksgiving? Haven't you told that a dozen times to the jury?
A. I said it was after Thanksgiving.
Q. Yes?
A. Well, September is after Thanksgiving.
Q. Your understanding is that it was after Thanksgiving?
A. Yes, sir, it was after Thanksgiving.
Q. So that it was in September, after Thanksgiving?
A. Yes, sir.
Q. That is correct, now, Jim?
A. Yes, sir, after Thanksgiving.
Q. Yes, that is right. Well now, that day, Mr. Darley was there that day?
A. Yes, sir, I remember seeing him there that day.
Q. Was Mr. Schiff there?
A. Yes, sir, Mr. Schiff was there that day.
Q. What time did Mr. Darley leave
A. I don't know what time he left.
Q. What time did Mr. Schiff leave?
A. I don't know what time he left.
Q. What time did Mr. Holloway leave?
A. Mr. Holloway left away from there about half past two.
Q. Do you remember that?
A. Yes, sir, I can remember that.
Q. How can you remember when Mr. Holloway left and yet don't remember when anybody else left?
A. I can always remember when he leaves, because you always have to tell him when you have to leave out and how long you are going to stay.
Q. You tell him when you are going to leave, and how long you are going to stay?
A. I didn't tell him that time, because I was going to work that evening.
Q. The next time, did you tell him you were going to ring out?
A. No, sir, I didn't tell him that I was going to ring out.
Q. The next time, did you tell him?
A. No, sir, I just told him I was going to work.
Q. If you never told him that you were going to ring out, how do you remember when he left?
A. Because I will tell you, if I didn't have any other work to do I would go down to the first floor and sit on a box and go to smoking, and he worked down there.
Q. And you didn't tell him when you were going to ring out?
A. No, sir. I didn't tell him when I was going to ring out.
Q. Therefore, your ringing out had nothing to do with when he left, because you never told him?
A. No, sir, I never told him that.
Q. You never told him anything about it? Well, now, in September, after Thanksgiving, was Mr. Darley there that day?
A. Yes, sir, I remember seeing Mr. Darley that day.
Q. Was Mr. Schiff there that day?
A. Yes, sir, I remember seeing him there.

Q. What time did Mr. Holloway leave?
A. Mr. Holloway left away from there about two o'clock.
Q. The next time you watched was right after Christmas?
A. No, sir, the next time I watched was Thanksgiving Day, then—
Q. You said awhile ago September was after Thanksgiving?
A. Yes, sir, after Thanksgiving day.
Q. All right. Well, now, Thanksgiving Day, the day you have told about in January, who did you see there in January, I mean who of the force?
A. I disremember now who I did see in January when I was there that morning.
Q. You disremember?
A. Yes, sir, I disremember.
Q. Can you remember anybody you saw there?
A. Nobody I saw there at all. Mr. Holloway, I can remember.
Q. Jim, isn't it true that on every Saturday morning, a number of people come there to that factory always?
A. Well, I don't know, I couldn't tell; nobody but just them that worked there.
Q. The first you watched, tell us anybody that come there that day?
A. I couldn't remember that; I couldn't tell you.
Q. You don't know about that?
A. No, sir.
Q. The second time, you don't know whether anybody was working there or not?
A. To my memory, I think there were some young ladies working up on the fourth floor.
Q. Some ladies working there that evening up on the four floor?
A. Yes, sir.
Q. That is your memory about the second time?
A. Yes, sir.
Q. Then, the third time, was anybody working there that evening, Saturday evening?
A. I don't know about the third time.
Q. You don't remember whether there were some young ladies working up there that evening?
A. No, sir, I don't know about the third time.
Q. You can't remember about that?
A. No, sir.
Q. Well now, Thanksgiving, do you know whether anybody was working there Thanksgiving evening?
A. No, sir, I don't know whether anybody was working there Thanksgiving evening or not.
Q. You don't know whether Mr. Schiff worked there that evening?
A. No, sir, I don't know whether Mr. Schiff worked that evening or not.
Q. You can't remember that, can you?
A. I didn't see Mr. Schiff at all.
Q. You can't remember whether he was there or not?
A. No, sir.
Q. You wouldn't swear that he was not there?
A. I will swear I didn't see him; I will swear he wasn't in the office with Mr. Frank.
Q. You swear to that?
A. Yes, sir.
Q. Will you swear he wasn't there that day?
A. I will swear Mr. Irby was working in the office.

Q. Thanksgiving Day?
A. No, sir, he wasn't working in the office on Thanksgiving.
Q. The next time, was there any ladies working on the fourth floor?
A. I don't remember.
Q. You don't remember whether there were or not?
A. No, sir.
Q. You can't remember that?
A. No, sir.
Q. They might have been?
A. I didn't see none of them there.
Q. You didn't see them?
A. No, sir.
Q. You only saw them working there one day?
A. I saw them working there the second evening.
Q. On the fourth floor. . . .
Q. Did you say anything about it? Do you think that you told about watching for Frank at that time. You think you told that at that time?
A. I don't know where I told them at that very time.
Q. Didn't you say that you did?
A. No, sir.
Q. That's your opinion that you did?
A. I aint got no opinion about it.
Q. Well, that's your best recollection that you did?
A. No, sir, it's not my best recollection.
Q. Well, what is your best recollection, that you didn't then?
A. What do you mean by that.
Q. Did you or did you not?
A. I don't know, sir. I'm telling you the truth.
Q. Well, he had already had that signal about stamping and whistling a long time. What did he give it to you over again for?
A. He told me that Thanksgiving, but didn't do it until I set then on the box.
Q. Didn't you say he always gave you that signal?
A. No, sir. I didn't say he always gave me that signal.
Q. Gave it to you Thanksgiving?
A. Yes, sir.
Q. And repeated it to you that day again?
A. Yes, sir.

The witness Conley was examined by the solicitor, who brought out the direct questions and answers Supra, and was then cross-examined by the defendant, when counsel brought out the cross-questions and answers Supra.

Thereafter, and while the witness Conley was still on the stand, Defendant's Counsel moved to rule out, exclude, and withdraw from the jury each and all of said questions and answers, upon the grounds stated at the time said motion was made that said questions and answers were irrelevant, immaterial, prejudicial, and dealt with other matters and things irrelevant and disconnected with the issues in the case.

The Court denied this motion in writing, making in so doing the following order:

"When the witness Conley was still on the stand his testimony not having been finished, the defendant, by his attorneys, moved to rule out, withdraw and exclude from the jury each and all the above questions and answers, because the same are irrelevant, immaterial, prejudicial, and deals with other matters and things irrelevant and disconnected with the issues of this case. After hearing argument of counsel, the Court overruled the motion to rule out, withdraw or exclude said above stated questions and answers from the jury, but permitted the same to remain before the jury."

In making said order and declining to rule out, exclude and withdraw said questions, and each of them, as well as all of the answers and each of them, the Court erred, for the reason that said questions and answers, each and all of them, were irrelevant, immaterial, illegal, prejudicial, and dealt with other matters and things wholly disconnected with the issues on trial, and the same amounted to accusing the defendant of other and independent crimes.

Defendant contends that this ruling of the Court was highly prejudicial to the defendant, tending to disgrace him before the jury and expose him to a conviction, not because he had committed murder, but because he was accussed of depravity and degeneracy.

When the third of the direct questions here sought to be excluded was asked by the solicitor the defendant objected because the evidence sought would be immaterial. The Court sustained the objection but the solicitor continued with the balance of the direct questions and answers here objected to and the cross-questions were thereafter asked and the answers given. The Court therefore erred in not excluding and withdrawing all of said testimony.

14. Because the Court erred in not ruling out, excluding, and withdrawing the following evidence direct and cross of the witness Conley, upon motion of defendant's counsel, made while Conley was still on the stand.

"I always stayed on the first floor like I stayed April 26th and watched for Mr. Frank while he and a young lady would be up on the second floor chatting. I don't know what they were doing; he only told me they wanted to chat. When the young ladies would come there, I would sit down at the first floor and watch the door for him. I watched for him several times. There will be one lady for Mr. Frank and one lady for another young man who was there. Mr. Frank was there along on Thanksgiving Day. I watched for him several times. A tall, heavy built lady come there that day. He told me when the lady came he would stamp and let me know that was the lady, and for me to go and lock the door. Well, the lady came, and he stamped, and I locked the door. He told me when he got through with the lady he would whistle for me to go and unlock the door. . . . And he says: (on April 26th) 'Now, when the lady comes, I will stamp like I did before' . . . I have seen Mr. Frank there in the office two or three times before Thanksgiving, and a lady was in the office, and she was sitting down in a chair and she had her clothes up to here, and he was down on his knees, and she had her hands on him. I have also seen Mr. Frank another time with a young lady lying on the table. She was on the edge of the table. I don't know the name of the woman that was there Thanksgiving Day; the man that was there was Mr. Dalton. . . . The lady that was there was a tall built lady, heavy

weight, she was nice looking, had on a blue looking dress with white dots in it, had on a greyish looking coat with kind of tails on it, white slippers and white stockings.

CROSS EXAMINATION.

"The first time I watched for Mr. Frank was sometime during last summer, about in July. I would be there sweeping and Mr. Frank come out and called me in the office. That was on a Saturday, about three o'clock. As to what Mr. Dalton would do, the young lady that worked at the factory would go out and get him and bring him back there. That was Mr. Dalton's lady. The lady that was with Mr. Frank was Miss Daisy Hopkins. She worked up there on the fourth floor. When Mr. Frank called me, there was a lady in the office with him. He talked to me in the lady's presence. She was Miss Daisy Hopkins. That was three or half past three. He would say: 'Did you see that lady go out there? You go down and see nobody don't come up here and you will have a chance to make some money.' One lady had already gone on out to get that young man, and the other lady was present. She came back after a while and brought Mr. Dalton with her. They walked into Mr. Frank's office and stayed there ten or fifteen minutes, came back down, and she says: 'All right, James,' and I says: 'All right;' and I would go back there to the trap door that leads down to the basement, and I pulled up the trap door, and they went down there. I opened the door because she said she was ready; I knowed where she was going. Mr. Frank told me to watch; he told me where they were going. I don't know how long they stayed there; I don't know what time they came back, but they came back after a while, the same way they came down. I kept the doors shut—not locked—all the time, and never left it. Mr. Dalton gave me a quarter and went out laughing, and the lady went up the steps. She didn't stay very long and came down, and after that Mr. Frank came down and left. That was about half past four. I left before Mr. Frank did. He gave me a quarter. That was the first Saturday. The next Saturday was about two weeks after that, about the last of July or the first of August. He told me the same Saturday that I was there: 'Now, you know what you done for me last Saturday. I want to put you wise this Saturday.' I says: 'All right, what time?' He says: 'Oh, about half past.' He got back from lunch about a quarter past two, then Mr. Holloway left, and then Miss Daisy Hopkins came into his office. Mr. Frank came out, popped his fingers and bowed to me—bowed his head to me, and then went back in the office. Then, I went down and stood by the door. I didn't lock it; I shut it. I don't know what happened next; I didn't hear him come out of his office at all. Then I went down and watched. No, I didn't hear her come out of his office. Mr. Frank stayed there about a half an hour that day, then the girl went out. He gave me a half a dollar, this time. The next time I watched for him was before Thanksgiving Day, sometime in the winter, about the last part of August. When he told me he wanted me to watch for him that time, it was on the fourth floor, right at the elevator. Snowball was standing there then. Mr. Frank says: 'I want to put you wise again for to-day.' He came back about half past two, and he says: 'She will be here in a minute.' The lady that came in was one that worked on the fourth floor. I don't know her name. It wasn't Miss Daisy Hopkins. She had hair like Mr. Hooper's, grey haired. She had a green suit of clothes. She went to Mr. Frank's office, and then I watched. I didn't hear them leave Mr. Frank's office. Then she came out, and then he came out and went out the factory, and then he came back. I stayed there waiting for him. He said: 'I didn't take out that money.' I says: 'I seed you didn't.' He said: 'That's

all right, old boy, I don't want you to have anything to say to Mr. Herbert or Mr. Darley about what's going on around here.' The next time I watched was Thanksgiving day. I met Mr. Frank there about eight o'clock in the morning. He says: 'A lady will be here in a little while; me and her are going to chat. I don't want you to do no work; I just want you to watch.' The lady came in about a half an hour. I didn't know her; I have never seen her working at the factory. I had seen her at the factory two or three nights before Thanksgiving Day in Mr. Frank's office about eight o'clock. She was a nice looking lady. I think she had on black clothes. She was a very tall, heavy built lady. The front door was open when she came Thanksgiving Day. She went up stairs and went in Mr. Frank's office. Mr. Frank came out and stamped right above the trash barrel. I was down stairs about the trash barrel. He told me he was going to stamp two times; then he stamped, and I closed the door, and then I came back and sat on the box about an hour and a half. Mr. Frank says: 'I'll stamp after this lady comes, and you go and shut the door and turn that night latch.' That's the first time he told me to lock the door, and he says: 'If everything is all right, you take and kick against the door.' And I kicked against the door. I stayed there about an hour and a half that time. Then, Mr. Frank came down and unlocked the front door, looked up the street, and then went back and told the lady to come down. She came down and said to Mr. Frank, while they were walking: 'Is that the nigger?' and he says: 'Yes.' And she says: 'Well, does he talk much?' and he says: 'He's the best nigger I've ever seen.' They went on out together; Mr. Frank came back. I went in his office. He gave me a $1.25. The lady had on a blue skirt with white dots in it, and white slippers and white stockings, and a grey tailor-made coat with pieces of black velvet on the edges of it, and a black hat with big black feathers over. The next time I watched for him was a Saturday in January, right after the first of the year. He said there will be a young man and two ladies that would be there that Saturday morning. I was standing by the side of Gordon Bailey on the elevator when he come and told me that about half past seven in the morning, and he said I could make some money off this man. Gordon Bailey and me was on the elevator together. He could hear what Mr. Frank was saying. I got through cleaning at about a quarter after two and stayed at the door. It was open, and the ladies came about half past two or three o'clock, and the young man came in and says: 'Mr. Frank put you wise?' 'Didn't he tell you to watch the door, two ladies and a young man would be there?' He said: 'Well, I'm the one.' Then he come and told the ladies to come on, and they went up stairs towards the clock; they stayed there about two hours. I didn't know either of the ladies. I don't know what they had on. The man was tall, slim built, heavy man; he didn't work there. I seen him talking to Mr. Holloway frequently during the week. That's the last time I watched for him. Snowball and I were in the box room when he told me to watch for him that time. I don't know if he knew Snowball was there or not. The day before Thanksgiving, when he talked to Snowball, we were on the elevator. Snowball could have heard anything that was said; Mr. Frank saw Snowball standing there. . . . Miss Daisy Hopkins worked at the factory from June, 1912, until Christmas. I worked on the same floor with her. I am sure she worked there from June until about Christmas. She was a low lady, kind of heavy; she was pretty, chunky, kind of heavy weight. I remember that she was there in June because I took a note to Mr. Herbert Schiff which she gave me. Mr. Schiff said it had June on it, when he read it. It was on the outside of the note. I looked and seen something on it; I don't know what it was. It was on the back of the note—June something, and he laughed at it. I know

Miss Daisy Hopkins left at Christmas, because Mr. Dalton told me that she wasn't coming back. It was one Saturday. Mr. Dalton was a slim looking man and tall, with thick eye lashes, black hair, light complected, weighed about 135 pounds, about thirty-five years old. I seen him around the factory several times. The first time was somewhere along in July, when he come in there with a lady. About two weeks after that, I met him at the door, about the last of August. The next time was just about Thanksgiving Day. Then I saw him after Christmas when he come there with a lady. Him and the lady was down in the basement. I don't know who she was. Last time I saw him was down at the station house. The detectives brought him down there. First Saturday I watched for Mr. Frank, I saw Mr. Holloway there; he left about half past two. I saw Mr. Darley that morning; don't know what time he left. The next Saturday I watched Mr. Holloway wasn't there; he was sick. That was about the last of July or first of August. The next time I watched, about the last of August, I saw Mr. Holloway. He left about two o'clock. The day I watched for him in September, after Thanksgiving Day, I saw Mr. Holloway leave about half past two. Schiff and Darley were there. I disremember who I saw there in January, except Mr. Holloway. Sometimes some of the girls worked there on Saturdays. Don't remember any girls that worked there on the first Saturday that I watched. The second time I watched, I think some ladies were working up on the fourth floor. I don't know about the third time, and I don't know whether anybody was working there Thanksgiving afternoon or not. I didn't see Mr. Schiff at all that day. I will swear he wasn't in Mr. Frank's office that day. I don't remember whether any ladies worked there the other times I was watching, or not. . . . I don't know whether I told them (detectives) about watching for Frank at that time. I haven't got any opinion about it. I haven't got any recollection. He told me about stamping and whistling on Thanksgiving Day, but didn't do it until I set then on the box."

Conley had testified both on direct and had been cross examined for a day and a half on other subjects, as above set out, and while on the stand and after testifying as above set out, counsel for defendant moved to rule out, exclude and withdraw each and every part of the evidence given by the witness as to all transactions had between Frank and other women at other times than on the day of the alleged murder, upon the grounds, made at the time, that evidence of such transactions was irrelevant, immaterial, illegal, prejudicial, and dealt with other matters and things irrelevant to and disconnected with the issues on trial, and the same amounted to accusing the defendant of other and independent crimes.

The evidence next above set out was, and is, all the evidence given by Conley dealing with Frank's transactions with women at other times than on the day of the murder, and was the evidence sought to be ruled out, excluded, and withdrawn from the consideration of the jury.

The Court declined, upon the motion made and for the reasons argued, to rule out, exclude and withdraw such evidence from the jury but left the jury free to consider the same.

The ruling of the Court was, and is, erroneous, for the reasons alleged above, and the Court erred in not granting the order asked, ruling out, excluding, and withdrawing such evidence from the jury.

When the solicitor first sought from the witness Conley the evidence here sought to be excluded the defendant objected because the evidence sought to be brought out would be immaterial. The Court ruled that such evidence would be immaterial, but after this ruling the solicitor brought out the direct testimony here sought to be ruled out and excluded. After the direct testimony supra had been brought out after the Court's ruling, the cross testimony supra here sought to be withdrawn was also brought out in an effort to modify or explain the direct evidence. Under the circumstances the Court ought to have granted the motion to exclude and withdraw all such evidence and for failing to do so committed error.

Movant assigns as error the action of the Court in allowing this evidence to go before the jury because the same was illegal, irrelevant, immaterial and hurtful to the defendant.

15. Because the Court permitted, over the objection of defendant's counsel made when the evidence was offered, that such evidence was irrelevant and immaterial, the witness Conley to swear that the police officers took him down to the jail, and to the door where Frank was, but that he never saw Frank at jail and had no conversation with him there.

The Court erred in permitting the introduction of this evidence, for the reasons above stated. It was hurtful for the reason that the solicitor contended, in his address to the jury, that Frank declined to see Conley, and that such declination was evidence of his guilt.

16. Because the Court, over objection of the defendant, made at the time the evidence was offered, that the same was irrelevant, immaterial, and not binding on Frank, permitted the witness, Mrs. White, to testify that Arthur White, her husband, and Campbell are both connected with the Pencil Company, and that she never reported seeing the negro on April 26th, 1913, which she testified she did see, in the pencil factory, to the City detectives until May the 7th, 1913.

For the reasons above stated, the Court erred in not excluding the evidence, and for the reason that the solicitor, in his address to the jury, contended that the fact that there was a negro (which he contended was Conley) in the factory the morning of April 26th was concealed from the authorities, and that such concealment was evidence of Frank's guilt.

17. Because the Court permitted, over the objection of defendant's counsel made when the same was offered, that the same was irrelevant and immaterial, the witness Mangum, to testify that Conley and another party went down from the pencil factory to the jail, that he had a conversation with Mr. Frank about confronting Conley, Frank then being on the fourth floor of the jail; that Chief Beavers, Chief Lanford, and Mr. Scott, with Conley, came to the jail to see Frank, and they asked him if they could see him; that he said: "I will go and see; and, if he is willing, it is all right;" that he went to Frank

and said: "Mr. Frank, Chief Beavers, Chief Lanford and Scott and Conley want to talk with you, if you want to see them;" that Frank said: "No, my attorney is not here, and I have got nobody to defend me;" that his lawyer was not there, and that no one was there to listen to what might be said.

The Court erred in admitting this evidence for the reasons above stated.

The solicitor in his agument pressed on the jury that the failure of Frank to face this negro and the detectives was evidence of guilt, and movant contends same was prejudicial.

18. Because the Court erred in permitting the witness, Dr. H. F. Harris, over the objection of the defendant, made at the time the testimony was offered that the same was irrelevant and immaterial, to testify:

"I might preface my remarks on this by saying that more than 12 or 15 years ago someone told me that the reason that cabbage was considered indigestible was because they were ordinarily cooked with meat or grease, and with the idea of settling this question, on my clinic I got a lot of patients whose stomachs were not in very good condition, and made a number of experiments particularly to determine the matter as to whether or not this was the case. During the course of the experiment that I made at that time, I was struck by the fact that the behaviour of the stomach after taking a small meal of cabbage and bread, either cornbread or biscuit,—that the behaviour of the stomach was practically the same as after taking some biscuit and some water alone.

"I discovered, as I say, at that time, that our ideas about how quickly cabbage digested were rather erroneous, and as I remarked a moment ago, I observed that the stomach freed itself of a mixture of cabbage and bread just about as quickly as we only gave bread alone; the amount of recovery on the part of the mucuous membrane in the way of sufficient gastric juices was about the same practically or probably a little bit more recovery with cabbage.

"It is the only way I can get at it, it is the only real knowledge I have on the subject in connection with the work that was done in this particular instance here."

The witness Harris testified that from the state of digestion of the food found in the stomach of Mary Phagan he could say she died in 30 or 40 minutes after her last meal of bread and cabbage, over the objection above made and the further objection that the witness could not give the result of other and different experiments made 12 or 15 years ago upon persons "whose stomachs were not in a very good condition," and not under the same circumstances and conditions, to sustain and bolster up the experiment made upon the stomach of Mary Phagan, and to sustain his assertion that Mary Phagan died from 30 to 40 minutes after she ate her last meal.

The Court overruled the objection and admitted the testimony and in doing so, the court for the reasons indicated, committed prejudicial error.

19. Because the court erred in permitting the witness, Dr. H. F. Harris, to testify, over the objection of the defendant made when the evidence was submitted, that the same was irrelevant and immaterial and that experts could

not give to sustain their opinions individual and isolated experiments but must answer from their knowledge of the science obtained from all sources, that . .

"Knowing the facts that cabbage would pass out of the stomach very quickly in a normal one, I ascertained her digestion, and as soon as I saw the cabbage in this case, I at once felt certain that this girl either came to her death or possibly the blow on her head at any rate, a very short time, perhaps three quarters of an hour of half an hour or forty minutes, or something like that, before death occurred. I then began a number of experiments with some gentlemen who had normal stomachs with a view of judging of the time.

"I had the mother of the girl to cook some cabbage, and it was given to people with absolutely normal stomachs; that I know from investigations of their stomachs.

"I will state in general terms there were only four persons experimented upon, and two of them were experimented upon twice in this connection, and in every single instance the effect on the cabbage was practically the same, that is, it was almost entirely digested, notwithstanding the fact that I had those men given some pieces just as large as were found in Mary Phagan's stomach, and I took pains to see to it that they did not chew this cabbage, but they ate it very rapidly, in three or four minutes, gulped it down, so that we would have as nearly as possible the conditions that I was certain existed at the time Mary Phagan ate her last meal. The result of this, you gentlemen have seen."

(The witness here was permitted over the objection as above stated, to exhibit several small glass jars containing what purported to be partly digested cabbage, resulting from experiments made.)

"Now I know from my observations of the cases that I present here that the digestion of these persons was normal. I did not make a microscopic examination of the stomachs of the gentlemen experimented upon, but I made an examination of their stomachs to see how they secrete their food, which is the only way we can tell. You can take the fluids and tell whether the stomach is normal, it is the only way we possess.

"I merely wish to call attention to the fact that I made experiments which varied in the time that the contents were in the person's stomach, from 38 minutes, which was the time the contents were in the stomach of the boy 14 years of age, to 70 minutes, in another one of my cases, and the results indicated in every instance, from 38 to 70 minutes, in every single instance, the cabbage was practically digested, practically altogether so."

Over objections made as is above stated, the Court permitted this testimony to go to the jury and in doing so committed prejudicial error. Experts can testify from the given state of any science, but can not explain the process or results of particular experiments made by themselves.

20. Because the Court permitted the witness Harris to testify as follows:

"I wish to say that I made a microscopic examination of those contents of the stomachs, and while I found in Mary Phagan's case, except in the case of particles of cabbage that were chewed up too small to give sufficient indication, the cabbage that was in the stomach gives every indication of having been introduced into it within three quarters of an hour; the microscopic-

examination showed plainly that it had not begun to dissolve, or at least, only a very slight degree, and it indicated that the process of digestion had not gone on to any extent at the time this girl was rendered unconscious at any rate. I wish further to state that on examining Mary Phagan's stomach I found that the starch she had eaten had undergone practically no alteration; there were a few of the starch cells which showed the beginning of the process of digestion, having changed into the substance called erthro-dextrine, but these were very much rarer than is the case in a normal stomach where the contents are exposed to the actions of the digestive fluids for something like, say 50 or 60 minutes. The contents taken from the little girl's stomach were examined chemically, and the result of the chemical examination showed that there were only slight traces of the first action of the digestive juices on the starch, thus confirming my microscopic examination, and showed clearly that only the very beginning of digestion had proceeded in this case.

"As I was saying, of even greater importance in this matter, it was found that there were 160 cubical solids, or about five and a half ounces of total contents remaining in the stomach, and after an ordinary meal of cabbage and bread, this is not the case. Under ordinary conditions, we get out perhaps on an average of something like anywhere from 50 to 60 or 70 cubic centimeters, or, say from a half to a third of what was found in this case, and it was plainly evident that none of this material had gone into the small intestine, because that was examined for it from the mouth out to the beginning of the large intestine, which is many feet away from it in the neighborhood of something like 25 feet away, and there was very, very little food found in the small intestine, none at all, as a fact, in the small intestine, which showed clearly, as I have said, that the contents of the stomach had not begun to be pushed on into the small intestine at the time that death occurred. This pushing on begins in about half an hour after such a meal as this, and by the time an hour is reached, the greater part of what is introduced into the stomach is already down in the small intestine, so that it becomes very clear from this that digestion had not proceeded to any extent at all."

The above testimony of Dr. Harris was objected to when offered because the same was argumentative. It was not, as movant contends, a statement of fact, scientific or otherwise, from which the jury could for themselves draw conclusions, but was a mixture of facts and arguments.

The Court declined to rule out this testimony, and declined to force the witness to abtstain from arguments and state the facts. This argument of the witness was clearly prejudicial to the defendant and failure to rule out the testimony was error.

21. Because, the Court permitted the witness C. B. Dalton to testify over the objection of defendant, made when the evidence was offered and before cross examination, that the testimony was irrelevant, incompetent, immaterial and illegal, dealt with other matters than the issues on trial and was prejudicial to the defendant's case; that he knew Leo Frank, visited the National Pencil Co.'s plant and saw Frank there four or five times; that he was in the office of Leo Frank, that he has been there three or four times with Miss Daisy Hopkins, and at these times Frank was in his office; that the witness had been in the basement, going down the ladder, that Frank knew he was in the building, but does not know whether Frank knew he was

in the basement; that he saw Conley there when he went there; that sometimes when he saw him in his office there would be ladies there, sometimes there would be two and sometimes one; he did not know how often he saw Conley there, but sometimes he would give him a quarter, that he did that a half dozen or more times; that he went to the factory about once a week for a half dozen weeks, that he saw Frank there in the evenings and in the day times; sometimes he would see cold drinks in the office, Coca-Cola, lemon limes, etc., that sometimes he saw beer in the office, that he never saw ladies there when beer and cold drinks were there do anything and never saw them do any writing.

The Court permitted this testimony of Dalton to be heard over the objections made as aforesaid and for such reason committed error.

This evidence was peculiarly prejudicial to the defendant because the solicitor insisted, in his argument, that in addition to being independent testimony looking to the same end, that it corroborated the testimony of Conley as to immoral conduct on the part of Frank.

22. Because the Court permitted the witness C. B. Dalton to be asked the following questions and make the following answers, over the objection of the defendant made at the time the evidence was offered, and before cross examination, that the testimony was irrevelant, incompetent, immaterial, and illegal, dealt with other matters and things than the issues of the trial, was prejudicial to the defendant.

Q. Mr. Dalton, have you ever worked at the pencil factory?
A. No, sir.
Q. Do you know Leo M. Frank?
A. Yes, sir.
Q. Do you know Daisy Hopkins?
A. Yes, sir.
Q. Do you know Jim Conley?
A. Yes, sir.
Q. Have you ever visited the National Pencil Factory?
A. Yes, sir; I have been there some.
Q. How many times?
A. I don't know; three, or four, or five times.
Q. Were you ever in the office of Leo M. Frank?
A. Yes, sir.
Q. On what occasion?
A. I have been there two or three times with Miss Daisy.
Q. Where was Frank when you were there?
A. He was in the office; I don't know whose office it was, but he was in the office.
Q. Were you ever down in the basement?
A. Yes, sir.
Q. What part of the basement did you visit? Can you tell me on that diagram (indicating)?
A. I have been down that ladder.

Q. (Looked at No. 12). Did Frank have any knowledge of your business down there?

A. I don't know; he knowed I was in the basement; he knowed I was there.

Q. Was Conley there when you were there?

A. Yes, sir; I seen Conley there, and the night-watchman, too—he wasn't Conley.

Q. At the time you saw Frank there was anybody else in the office with him?

A. Yes, sir; there would be some ladies there; sometimes two and sometimes one, maybe they didn't work in the morning and would be there in the evening.

Q. How many times did you pay Jim Conley anything?

A. I don't know.

Q. About?

A. Gave him a quarter when I was going in sometimes; I expect I gave him a half dozen or more—about every week.

Q. What time of day or night was it that you saw Mr. Frank in his office?

A. It was in the evening—in the day time, sorter.

Q. What, if anything, would he have up there at the time?

A. Sometimes he would have cool drinks.

Q. What kind of drinks?

A. Coca-Cola, lemon lime, or something of that sort.

Q. What else?

A. Some beer, sometimes.

Q. Some beer?

A. Yes, sir.

Q. Were those ladies doing any stenographic work up there?

A. I never seed them doing any writing. I never stayed there long, but I never seed them doing any writing.

Q. You never saw anything of that kind going on?

A. No, sir.

The Court permitted these questions and answers to be heard by the jury, over the objection of the defendant, aforesaid, and committed error, for the reasons aforesaid. His evidence was particularly prejudicial to the defendant, because the solicitor insisted in his argument that it corroborated the testimony of Conley as to immoral conduct on the part of Frank.

The Court erred for the reasons above stated in not ruling out and excluding from the jury each and all of the above questions and answers.

23. Because the Court permitted, over the defendant's objection, made when the testimony was offered, that it was illegal, immaterial, and because it could not be binding on the defendant, the witness S. L. Rosser, to testify that since April 26, 1913, he had been engaged in connection with this case; that he visited Mrs. Arthur White subsequent to April 26; that the first time the witness ever claimed to have seen the negro at the factory when she went into the factory on April 26th, was some time about the 6th or 7th of May.

The Court, over objections as stated, admitted the testimony just above, and in doing so erred, for the reasons herein stated.

This was particularly prejudicial to the defendant, because the solicitor contended in his argument to the jury that the fact that factory employees

did not disclose the fact that Mrs. White saw the negro on April 26th, was evidence that the defendant was seeking to suppress testimony material to the discovery of the murderer.

24. Because, during the trial, and on August 6, 1913, pending the motion of defendant's counsel to rule out the testimony of the witness Conley tending to show acts of perversion on the part of the defendant and acts of immorality wholly disconnected with and disassociated from this crime. (Such evidence being set out and described in grounds 13 and 14 of this motion.)

The Court declined to rule out said testimony, and immediately upon the statement of the Court that he would let such testimony remain in evidence before the jury, there was instant, pronounced and continuous applause throughout the crowded court room wherein the trial was being had, by clapping of hands and by stamping of feet upon the floor.

The jury was not then in the same room wherein the trial was being had, but in an adjacent room not more that fifty feet from where the judge was sitting and not more than fifteen or twenty feet from portions of the crowd applauding, and so close to the crowd, in the opinion of the Court, as to probably hear the applauding.

Immediately upon said applauding the defendant's counsel moved the Court for a mistrial of the cause; and, upon the announcement of the Court that he would not grant a mistrial, moved the Court to clear the Court-room, so that other demonstrations could not be had.

The Court refused to grant a mistrial and declined to clear the court-room.

In refusing a mistrial and in declining to clear the court-room, the Court erred. The passion and prejudice of those in the crowded court-room were so much aroused against the defendant, as contended by counsel for the defendant, that he could not obtain a fair and impartial trial.

The Court, as movant contends, also erred in not clearing the court-room of the disorderly crowd, but left them in the court-room, where their very presence was a menace to the jury.

It is true that the Court did threaten that upon a repitition of such disorder he would clear the court-room, but such a threat, as movant contends, was wholly inadequate, as evidenced by the fact that during the same day of the trial, while the witness Harris was upon the stand, the crowd laughed jeeringly when Mr. Arnold, one of the defendant's counsel, objected to a comment of the solicitor, and that, too, in the presence of the jury.

And again, during the trial, when Mr. Arnold, one of the defendant's counsel, objected to a question asked, the following colloquy took place:

Mr. Arnold: "I object to that your Honor; that is, entering the orders on that book merely; that is not the question he is asking now at all.

The Court: "What is the question he is asking now?" (Referring to questions asked by the Solicitor-General.)

Mr. Arnold: "He is asking how long it took to do all this work connected with it." (Referring to work done by Frank the day of the murder.)

The Court: "Well, he knows what he is asking him."

Upon this suggestion of the Court, that the Solicitor knew what he was doing, the spectators in the court-room applauded, creating quite a demonstration.

Mr. Arnold again complained of the conduct of the spectators in the court-room. The Court gave no relief, except directing the Sheriff to find out who was making the noise, to which the Sheriff replied that he could maintain order only by clearing the court-room.

25. Because the Court erred in admitting, over the defendant's objection, made at the time the testimony was offered, that it was illegal, immaterial and irrelevant, the introduction of certain glass bottles containing partly digested cabbage, which resulted from tests made on other parties by the witness, Dr. Harris, wherein the cabbage which he claimed to be cooked the same as was the cabbage eaten by Mary Phagan, after it had remained in the stomach of such other parties from 30 to 50 minutes were taken out by means of a stomach pump.

The purpose of these experiments was to show the state of digestion of this cabbage in comparison with the state of digestion of the cabbage taken from the stomach of Mary Phagan, so as to sustain the contention of the State that Mary Phagan was killed within 30 or 40 minutes after eating the cabbage and bread.

The Court admitted these samples of partly digested cabbage taken from the stomach of others, as aforesaid, and in doing so, committed error for the reasons above stated, and for the further reason that there was no evidence, as the defendant's counsel contend, that the same circumstances and conditions surrounded these other parties in the eating and digestion of the cabbage as surrounded Mary Phagan in the eating and digestion on her part and no evidence that the stomachs of these other parties were in the same condition as was Mary Phagan's.

26. Because the Court, in permitting the witness, Harry Scott, to testify over the objection of defendant, made at the time the testimony was offered, that same was irrelevant, immaterial and not binding upon the defendant, that he did not get any information from anyone connected with the National Pencil Company that the negro Conley could write, but that he got his information as to that from entirely outside sources, and wholly disconnected with the National Pencil Company.

The Court permitted this testimony to be given over the objections above stated, and in doing so, for the reasons therein stated, committed error.

This was prejudicial to the defendant, because the negro Conley at first denied his ability to write and the discovery that he could write was as the State contended, the first step towards connecting Conley with the crime, and the Solicitor contended in his argument to the jury that the fact that the Pencil Company authorities knew Conley could write and did not disclose

that to the State authorities; was a circumstance going to show the guilt of Frank.

27. Because the Court permitted the witness, Harry Scott, to testify over the objection of defendant's counsel, made when the testimony was offered, that the same was irrelevant, immaterial, illegal and not binding on the defendant, that the witness first communicated Mrs. White's statements about seeing a negro on the street floor of the pencil factory on April 26, 1913, to Black, Chief Lanford, and Bass Rosser, that the information was given to the detectives on April 28th.

The Court, over the defendant's objections, permitted the above testimony to be given, and in doing so erred for the reasons above stated. This was prejudicial to the defendant, because it was contended by the State that this witness, Harry Scott, who was one of the Pinkerton detectives who had been employed to ferret out the crime, by Frank acting for the National Pencil Company, had not promptly informed the officials about the fact of Mrs. White's seeing this negro and that such failure was evidence pointing to the guilt of Frank.

This witness was one of the investigators for the Pinkerton Detective Agency, who was employed by Frank acting for the National Pencil Company to ferret out this crime.

28. Because the Court permitted Harry Scott, a witness for the State, to testify over the objection of the defendant, made at the time that same was offered, that the same was irrelevant, immaterial, illegal and prejudicial to the defendant; that the witness, in company with Jim Conley, went to the jail and made an effort to see Frank. And that after Conley made his last statement (the statement about writing the notes on Saturday) Chief Beavers, Chief Lanford and the witness went to the jail for the purpose of confronting Frank. That Conley went with them; that they saw the Sheriff and explained their mission to him and the Sheriff went to Frank's cell; that the witness saw Frank at the jail on May 3rd (Saturday), and that Frank refused to see Conley only through Sheriff Mangum; that was all.

The Court, in admitting this testimony over the objections made, erred for the reasons stated above. This was error prejudicial to the defendant, because the witness Mangum, over the defendant's objection, had already been allowed to testify that Frank declined to see Chief Lanford, Chief Beavers, the witness and Conley, except with the consent of his counsel or with his counsel; and the Solicitor in his argument asserted that the failure of Frank to see the witness while he was employed by the Pencil Company to ferret out the crime in the presence of the negro and the two chiefs, was strong evidence of his guilt.

29. Because J. M. Minar, a newspaper reporter for the Atlanta Georgian, was called by the defendant for the purpose of impeaching the witness George

Epps who claimed that on Saturday of the crime he accompanied Mary Phagan from a point on Bellwood Avenue to the center of the city of Atlanta, by showing that on April 27th at the house of Epps, he asked George, together with his sister, when was the last time they saw Mary Phagan. In reply, the sister of Epps said she had seen Epps on the previous Thursday, but the witness Epps said nothing about having come to town with Mary Phagan the day of the murder but did say he had ridden to town with her in the mornings of other days occasionally.

Upon cross examination, over the objection of defendant's counsel made when the cross examination was offered, that the same was irrelevant, immaterial, incompetent, prejudicial to the defendant, and not binding on the defendant, the witness was allowed to testify that he went to the house of Epps in his capacity of reporter; that one Clofine was the City Editor and that the witness was under him and that Clofine was a constant visitor of Frank at the jail.

The Court admitted this testimony over the objections aforesaid and in doing so erred. There was no evidence of any relationship between Frank and Clofine which could show any prejudice or bias in Frank's favor, even by Clofine and certainly none on the part of the witness Miner.

30. Because the Court erred in permitting the witness Schiff, to testify over the objection of defendant made at the time the testimony was offered, that the same was incompetent, irrelevant and immaterial, that it was not Frank's custom to make engagements Friday for Saturday evening, then go off and leave the financial sheet that had to be over at Montag's Monday morning not touched.

The Court permitted this testimony over the objection of defendant and therein erred, for the reasons stated.

This was prejudicial, because it was the contention of the State that Frank, contrary to his usual custom, made an engagement on Friday before the crime to go to the baseball game on Saturday afternoon, leaving the financial sheet unfinished, although such sheet ought to have been prepared on Saturday and sent to Montag's to the general manager of the factory on Monday. The only material issue was what took place Friday and Saturday and it was wholly immaterial as to what his custom previous to that time had been.

31. Because, during the trial the following colloquy took place between the Solicitor and the witness Schiff:

Q. Isn't the dressing room back behind these doors?
A. Yes, it is behind these doors.
Q. That is the fastening of that door, isn't it?
A. Yes.
Q. And isn't the dressing room back there then?
A. That isn't the way it is situated.
Q. It isn't the way it is situated?
A. It is not, no, sir.

Q. Why, Mr. Schiff, if this is the door right here and—

A. Mr. Dorsey I know that factory.

Q. Well, I am trying to get you to tell us if you know it; you have no objection to telling it, have you?

(Here objection was made by defendant's counsel that Schiff had shown no objection to answering the questions of the Solicitor and that such questions as the one next above, which indicated that the witness did object to answering was improper.)

Mr. Dorsey: I have got a right to show the feeling.

The Court: Go on, now, and put your questions.

Mr. Dorsey: Have you any objections to answering the question, Mr. Witness?

A. No, sir; I have not.

These comments of the Solicitor, reflecting upon the witness were objected to and the Court urged to prevent such reflections. This the Court declined to do and allowed the Solicitor to repeat the insinuation that the witness was objecting to answering him.

This was prejudicial error. The witness deserved no such insinuations as were made by the Solicitor and in the absence of the requested relief by the Court, the jury was left to believe that the reflections of the Solicitor were just.

This witness was one of the main leading witnesses for the defendant, and to allow him, movant contends, to be thus unjustly discredited was harmful to the defendant.

32. Because the Court erred in declining to allow the witness Miss Hall to testify that on the morning of April 26th, and before the murder was committed, Mr. Frank called her over the telephone, asking her to come to the pencil factory to do stenographic work, stating at the time he called her that he had so much work to do that it would take him until six o'clock to get it done.

The defendant contends that this testimony was part of the res gestae and ought to have been heard by the Court, and failure to do so committed error.

33. Because, while Philip Chambers, a youth of 15 years of age, and a witness for the defendant, was testifying, the following occurred:

Q. You and Frank were pretty good friends, weren't you?

A. Well, just like a boss ought to be to me.

Q. What was it that Frank tried to get you to do that you told Gantt about several times?

A. I never did complain to Mr. Gantt.

Q. What proposition was it that Mr. Frank made to you and told you he was going to turn you off if you didn't do what he wanted you to?

A. He never made any proposition to me.

Q. Do you deny that you talked to Mr. Gantt and told him about these improper proposals that Frank would make to you and told you that he was going to turn you off unless you did what he wanted you to do?

A. I never did tell Gantt anything of the sort.

(Objection was here made by the defendant that the answer sought would be immaterial.)

The Court: Well, I don't know what it is, ask him the question.

Q. Didn't you tell Gantt the reason why Frank said he was going to turn you off?

A. No, sir.

Q. Didn't Frank tell you he was going to turn you off unless you would permit him to do with you what he wanted to do?

A. No, sir.

Q. No such conversation ever occurred?

A. No, sir.

Q. With J. M. Gantt, the man who was bookkeeper and was turned off there?

A. No, sir, I never told him any such thing.

Q. No such thing ever happened?

A. No, sir.

Mr. Arnold: Before the examination progresses any further, I want to move to rule out the witness said there wasn't any truth in it, but I want to move to rule out the questions and answers in relation to what he said Frank proposed to do to him—right now. I think it is grossly improper and grossly immaterial; the witness says there is no truth in it, but I move to rule it out.

Mr. Dorsey: We are entitled to show the relations existing between this witness and the defendant, your Honor.

Mr. Arnold: We move to rule out as immaterial, illegal and grossly prejudicial and as grossly improper, and the gentleman knows it, or ought to know it, the testimony that I have called your Honor's attention to.

The Court: Well, what do you say to that, Mr. Dorsey? How is this relevant at all over objection?

Mr. Dorsey: We are always entitled to show the connection, the association, the friendship or lack of friendship, the prejudice, bias, or lack of prejudice and bias, of the witness, your Honor. You permitted them, with Conley, to go into all kinds of proposals to test his memory and to test his disposition to tell the truth, etc. Now I want to lay the foundation for the impeachment of this witness by this man Gantt to whom he did make these complaints.

The Court: Well, I rule it all out.

Mr. Arnold: It is the most unfair thing I have ever heard of, to try to inject in here in this illegal way, this kind of evidence; any man ought to know that it is illegal. It has no probative value, and has been brought in here by this miserable negro and I don't think any sane man on earth could believe it. It is vile slander and fatigues the indignation to sit here and hear things like this suggested, things that your Honor and everybody knows are incompetent.

The Court: Well, I sustain your objection.

Mr. Arnold: If the effort is made again, your Honor, I am going to move for a mistrial. No man can get a fair trial with such inuendoes and insinuations as these made against him.

The Court: Have you any further questions, Mr. Dorsey?

Mr. Dorsey: That is all I wanted to ask him. I will bring Gantt in to impeach him.

The Court: Well, I have ruled that all out.

Mr. Dorsey: Well, we will let your Honor rule on Gantt, too.

The assertion by the solicitor that this witness did make the suggested complaints to Gantt, the insinuations involved in the questions of the solicitor

that Frank had committed disgraceful and prejudicial acts with the witness and the final assertion of the solicitor when the Court ruled it out that he would introduce Gantt and let the Court rule on Gantt too, was highly prejudicial to the defendant. The Court erred in permitting the solicitor to make the insinuations and to indulge in the threat that he would let the Court rule on Gantt too, in the presence of the jury and without any rebuke on the part of the Court. The Court erred in not formally withdrawing these insinuations and assertions from the jury and in not of his own motion severely rebuking the solicitor for his conduct. The mere ruling out of the testimony was not sufficient. Nothing but a severe rebuke to the Solicitor-General would have taken from the jury the sting of the insinuations and threats of the solicitor.

34. Because, while Mrs. Freeman was on the stand, after testifying as to other things she testified that while she and Miss Hall, on April 26th, were at the restaurant immediately contiguous to the pencil factory, and after they had left the factory at 11:45 o'clock, a. m., and had had lunch, that Lemmie Quinn came in and stated that he had just been up to see Mr. Frank.

Upon motion of the solicitor this statement that he had been up to see Mr. Frank was ruled out, as hearsay.

This statement of Lemmie Quinn was a part of the res gestae and was not hearsay evidence and was material to the defendant's cause. Lemmie Quinn testified that he saw Mr. Frank in his office just before he went down to the restaurant and had the conversation with Mrs. Freeman and Miss Hall; this testimony was strongly disputed by the solicitor. Lemmie Quinn's statement that he was in Frank's office just before going into the restaurant was of the greatest moment to the defendant, because it strongly tended to dispute the contention of the State that Mary Phagan was killed between twelve and half past.

The Court erred in ruling out and declining to hear this, for the reasons above stated. The testimony was relevant, material, and part of the res gestae, and should have been sent to the jury.

35. Because the Court permitted, at the instance of the Solicitor-General, the witness Sig Montag to testify over the objection of the defendant, made when same was offered, that same was irrelevant, immaterial, incompetent; that the National Pencil Company employed the Pinkertons; that the Pinkertons have not been paid, but have sent in their bills; that they sent them in two or three times; that, otherwise, no request has been made for payment, and that Pierce, of the Pinkerton Agency, has not asked the witness for pay.

In permitting this testimony to go to the jury, over the objections above stated, the Court erred.

The introduction of this evidence was prejudicial to the defendant, for the reason that the solicitor contended that the pay due the Pinkertons by the Pencil Company was withheld for the purpose of affecting the testimony of the agents of that company.

36. Because the Court permitted, at the instance of the solicitor the witness Sig Montag, to testify over the objection of defendant, made at the time the testimony was offered that same was irrelevant, immaterial, and incompetent, that he got the reports made on the crime by the Pinkertons and that they were made. That these reports came sometimes every day and then they did not come for a few days and then came again. That he practically got every day's report; that he got the report about finding the big stick and about the finding of the envelope, that he got them pretty close after they were made; that he knew about them having the stick and the envelope when he read the report. That he did not request Mr. Pierce, representing the Pinkertons, to keep from the police and the authorities the finding of the stick and the envelope.

The Court, over the objections of the defendant, on the grounds stated, permitted this testimony to go to the jury and in doing so erred.

This was prejudicial to the defendant because the solicitor insisted that the finding of the envelope and stick were concealed from the authorities.

37. Because the Court erred in permitting the witness Leech, a street car inspector, at the instance of the solicitor and over the objections of the defendant that same was irrelevant, immaterial, and incompetent, to testify that he had seen street car men come in ahead of their schedule time. That he had seen that often and had seen it last week. That he, Leech, had suspended a man last week for running as much as six minutes ahead of time. That he suspends them pretty well every week and that he suspends a man for being six minutes ahead of time just like he would for being six minutes late. It frequently happens that a street car crew comes in ahead of time and that they are given demerits for it and that he sometimes suspends them for it. That the street car crews are relieved in the center of town; that sometimes a crew is caught ahead of time when they are going to be relieved. That it is not a matter of impossibility to keep the men from getting ahead of time, although that does happen almost every day. That there are some lines on which the crew does not come in ahead of time because they can not get in. It frequently happens that the English Avenue car cuts off the River car and the Marietta car. It often happens that these cars are cut off. That when there is a procession or anything moving through town, it makes the crew anxious to get through town, that they are punished just as much for coming in ahead of time even a day like that as they would be any other day. They do their best to keep the schedule, but in spite of it they sometimes get off.

The Court permitted the testimony of the witness Leech over the objection of the defendant that the same was irrelevant, immaterial and incompetent, and in doing so committed error.

This was prejudicial to the defendant, because the crew on the English Avenue car upon which the little girl, Mary Phagan, came to town, testified that she got on their car at ten minutes to twelve. That under their schedule they should reach the corner of Broad and Marietta Streets at 7½ minutes

past twelve. That they were on their schedule time on April 26th and did reach that place at 12:07 or 12:07½. What other crews did at other times or even what this crew did on other occasions was wholly immaterial and in no way illustrated just what took place on the trip wherein Mary Phagan came to town. That other crews often came in ahead of time or that this particular crew often came in ahead of time was wholly immaterial.

38. Because during the examination by Mr. Arnold, counsel for the defendant, of V. H. Kreigshaber, a witness for the defendant, there was laughter in the audience, sufficiently generally distributed throughout the audience and loud enough to interfere with the examination. The testimony elecited from Kreigshaber was that Frank was a young man, and that Kreigshaber was older, but he didn't know how much older. Mr. Arnold called the Court's attention to the interruption for the purpose of obtaining some action from the Court thereon.

The Court stated that if there was other disorder no one would be permitted in the court room on the following day and requested the Sheriff to maintain order.

The defendant says that the Court erred in not then taking radical steps to preserve order in the court room and to permit the trial to proceed orderly and that a threat to clear the court room upon the following day and the request for the Sheriff to keep order was not sufficient for the purpose.

This was prejudicial to the defendant, because the laughter was directly in derision of the defendant's defense being made by his counsel.

39. Because the Court permitted, at the instance of the Solicitor, the witness Milton Klein to testify, over the objection of the defendant, made when the evidence was offered, that the same was immaterial, as follows:

"When the witness Conley was brought to the jail Mr. Roberts came to the cell and wanted Frank to see Conley. I sent word through Mr. Roberts that Frank didn't care to see him. Mr. Frank knew that the detectives were down there and afterwards they brought Conley up there and of course Mr. Frank knew he was there. I knew and Mr. Frank knew he was there. Mr. Frank was at one side and I acted as spokesman. Mr. Frank would not see any of the city detectives. Frank gave as his reason for refusing to see Conley with the detectives that he would see him only with the consent of Mr. Rosser, his attorney. I do not know whether Mr. Frank sent and got Mr. Rosser or not. I told the detectives about sending and getting Mr. Rosser's consent. I think Mr. Goldstein was there and Scott and Black and a half-dozen detectives, a whole bunch of them. I was there only once when Conley was there, that was the time when Conley swore he wrote the notes on Friday. When Conley came up there with the detectives, Frank's manner, bearing and deportment were natural. He considered Conley in the same light he considered any other of the city detectives. I know that because I conferred with him about it and he said he would not see any of the city detectives without the consent of Mr. Rosser; he considered Scott as working for the city at that time. I sent word that he would not receive any of the city detectives, Black or anyone of the rest of them. Frank considered Scott with the rest of them, including him with the city detectives. He would

not see anyone of the city detectives and that included Scott. Frank did not tell me that, the inference was mine. Frank merely said he would receive none of the city detectives without Mr. Rosser's consent, that was the substance of his conversation. Mr. Roberts came up and announced the city detectives; this was at Frank's cell in the county jail."

The Court permitted this testimony to go to the jury over the objections made as above stated, and in doing so committed error.

This was especially prejudicial to the defendant, because the Solicitor, in his argument to the jury stressed and urged upon the jury that this failure of the defendant to, as he expressed it, face this negro Conley and the detectives, even in the absence of his own counsel, was evidence of guilt.

40. Because the Court permitted Miss Mary Pirk to be asked the following questions and to make the following answers on cross examination made by the Solicitor:

Q. You never heard of a single thing immoral during that five years—that's true? (Referring to the time she worked at the pencil factory.)

A. Yes, sir, that's true.

Q. You never knew of his (~~Frank~~'s) being guilty of a thing that was immoral during those five years—is that true?

A. Yes, sir.

Q. You never heard a single soul during that time discuss it?

A. No, sir.

Q. You have never heard of his going in the dressing rooms there of the girls?

A. No, sir.

Q. You never heard of his slapping them as he would go by?

A. No, sir.

Q. Did you ever see Mr. Frank go back there and take Mary off to one side and talk to her?

A. I never seen it.

Q. That never occurred?

A. I have never seen it.

Q. You never heard about the time that Frank had her off in the corner there, and she was trying to get back to her work?

A. No, sir.

Q. You didn't know about that?

A. No, sir.

Q. That was not discussed?

A. No, sir.

These questions were asked over the objection of the defendant, because even if the Solicitor's questions brought out that the witness had heard charges of immorality against Frank, that her answers thereabout would have been irrelevant and immaterial in this trial of Frank for murder. The fact that Frank might have been frequently guilty of immorality could not be held against him on a trial for the murder of Mary Phagan. Nor, could acts of immorality with women be heard, even on cross examination, as evidence of bad character and reputation, upon Frank's trial for the murder of Mary Phagan. Lasciviousness is not one of the character traits involved in a

case of murder and can not be heard in a murder trial, even when the defendant has put his character in issue.

41. Because the Court permitted the witness W. D. McWorth to testify, at the request of the Solicitor-General, over the objection of the defendant made at the time the testimony was offered, that the same was immaterial.

"Mr. Pierce is the head of the Pinkerton office here. I do not know where he is; the last time I saw him was Monday evening, I do not know where Mr. Whitfield is (Mr. Whitfield was also a Pinkerton man). I saw him the last time Monday afternoon. I do not know whether Pierce and Whitfield are in the city or not."

The Court admitted this testimony over the objections of the defendant, made at the time the testimony was offered, for the reasons stated and in so doing committed error. This was especially prejudicial to the defendant. Pierce and Whitfield were part of the Pinkerton's force in the city of Atlanta and the inference of the solicitor was that he wished their whereabouts to be shown, upon the theory that the Pinkertons were employed by Frank for the National Pencil Company and that a failure on the part of Frank to produce them would be a presumption against him, as he stated it, upon the well-known principle of law that if evidence is shown to be in the possession of a party and not produced, it raises a presumption against them.

42. Because the Court permitted McWorth, at the instance of the Solicitor-General to testify over the objections of the defendant, made when the evidence was offered, that the same was irrelevant, immaterial and illegal:

"I reported it (the finding of the club and envelope) to the police force about 17 hours afterwards. After I reported the finding, I had a further conference with the police about it about four hours afterwards. I told John Black about the envelope and the club. I turned the envelope and club into the possession of H. B. Pierce."

The Court heard this testimony over the objection of the defendant, made as above stated, and in doing so committed error, for the reasons herein stated.

This was prejudicial to the defendant, because the Solicitor-General contended that his failure to sooner report the finding of the club and the envelope to the police were circumstances against Frank. These detectives were not employed by Frank, but by Frank for the National Pencil Company, and movant contends that he is not bound by what they did or failed to do. The Court should have so instructed the jury.

43. Because the court permitted the witness Irene Jackson, at the instance of the Solicitor-General and over the objection of the defendant, that the testimony was irrelevant, immaterial, illegal, to testify as follows:

Q. Do you remember having a conversation with Mr. Starnes about something that occurred.

A. Yes, sir.

Q. Now what was that dressing room incident that you told him about that time?

A. I said she was undressing.

Q. Who was undressing?
A. Ermilie Mayfield, and I came in the room, and while I was in there, Mr. Frank came to the door.
Q. Mr. Frank came in the door?
A. Yes, sir.
Q. What did he do?
A. He looked and turned around and walked out.
Q. Did Mr. Frank open the door?
A. Yes, he just pushed it open.
Q. Pushed the door open?
A. Yes, sir.
Q. And looked in?
A. Yes, sir.
Q. And smiled?
A. I don't know whether, I never notice to see whether he smiled or not, he just kind of looked at us and turned around and walked out.
Q. Looked at you, stood there how long?
A. I didn't time him; he just came and looked and turned and walked out.
Q. Came in the dressing room?
A. Just came to the door.
Q. Came into the door of the dressing room?
A. Yes.
Q. How was Miss Ermilie Mayfield dressed at that time?
A. She had off her top dress, and was holding her old dress in her hand to put it on.
Q. Now, you reported that to the forelady there?
A. I did not but Ermilie did.
Q. Now did you talk or not to anybody or hear of anybody except Miss Ermilie Mayfield talking about Mr. Frank going in the dressing room there when she had some of her clothes off?
A. I have heard remarks but I don't remember who said them, or anything about it?
Q. (By Mr. Rosser): Was that before April 26th?
A. Yes, sir.
Q. Well, what was said about Mr. Frank going into the room, the dressing room?
A. I don't remember.
Q. Well, by whom was it said?
A. I don't remember.
Q. Well, how many girls did you hear talking about it?
A. I don't remember; I just remember I heard something about it two or three different times, but I don't remember anything about it, just a few times.
Q. Was that said two or three different times?
A. I said a few times, I said two or three times.
Q. How would the girls—she said she heard them talking about Mr. Frank going in the dressing room on two or three different occasions—well, you know you heard them discussing about his going in this dressing room on different occasions, two or three different occasions, did you?
A. Yes.
Q. That is what you said, wasn't it?
A. Yes, sir.

Q. Now when was it that he run in there on Miss Ermilie Mayfield?
A. It was the middle of the week after we had started to work, I don't remember the time.
Q. The middle of the week after you had started to work?
A. Yes, sir.
Q. Was that the first time you ever heard of his going in the dressing room, or anybody?
A. Yes.
Q. That was the first time?
A. Yes, sir.
Q. Then that was reported to this forelady?
A. Yes, sir.
Q. Then when was the second time that you heard he went in there?
A. He went in there when my sister was lying down.
Q. Your sister was lying down, in what kind of position was your sister?
A. She just had her feet up on the table.
Q. Had her feet up on the table?
A. Had them on a stool, I believe, I don't remember.
Q. A table or stool?
A. Yes, sir.
Q. Was she undressed or dressed?
A. She was dressed.
Q. She was dressed; do you know how her dress was?
A. No sir, I didn't look.
Q. You don't know that, you were not in there?
A. Yes, sir, I was in there, but I didn't look.
Q. Well, now, what did Mr. Frank do that time?
A. I didn't pay any attention to it, only he just walked in and turned and walked out, looked at the girls that were sitting in the window, and walked out.
Q. What did the girls say about that?
A. I don't remember.
Q. Did they talk about it at all?
A. There was something said about it, but I don't remember.
Q. Well now did you or not hear them say that he would go in that room and stand and stare at them?
A. Yes, sir, I have heard something, but I don't remember exactly.
Q. You heard that; how often did you hear that talked?
A. I don't remember.
Q. You don't remember how often you heard them say he walked in there and stood and stared at them?
A. I don't remember.
Q. You don't remember that; well now, you said about three times those things occurred, and you have given us two, Miss Mayfield and your sister, what was the other occasion?
A. Miss Mamie Kitchens.
Q. Miss Mamie Kitchens?
A. Yes, sir.
Q. Mr. Frank walked in the dressing room on Miss Mamie Kitchens?
A. We were in there, she and I.
Q. You were in there and Mr. Frank came in there?
A. Yes, sir.
Q. So that was the three times you know of yourself?
A. Yes, sir.

Q. Then did you hear it talked of?
A. I have heard it spoken of, but I don't remember.
Q. You have heard them speak of other times when you were not there, is that correct?
A. Yes, sir.
Q. How many times when you were not there? That is three times you saw him; how many times did you hear them talk about it when you were not there?
A. I don't remember.
Q. What did they say Mr. Frank did when he would come in that dressing room?
A. I don't remember.
Q. Did he say anything those three times when you were there?
A. No, sir.
Q. Was the door closed?
A. It was pushed to, but there was no way to fasten the door.
Q. Pushed to, but no way to fasten it?
A. No, sir.
Q. He didn't come in the room?
A. He pushed the door open and stood in the door.
Q. Stood in the door, what kind of a dressing room was that?
A. It was—just had a mirror in it; you mean to describe the inside?
Q. Just describe it; was it all just one room?
A. Yes, sir, and there were a few lockers for the foreladies.
Q. A few lockers around the walls, a place where the girls changed their street dress and got into their working dress, and vice-versa?
A. Yes, sir.
Q. Now, what else did you ever see that Mr. Frank did except go in the dressing room and stare at the girls?
A. Nothing that I know of.
Q. When Mr. Frank opened the door, there was no way he could tell before he opened the door what condition the girls were in, was there?
A. No, sir.
Q. (By Mr. Arnold): He didn't know they were in there, did he?
A. I don't know.
Q. That was the dressing room and the usual hour for the girls to attend the dressing room, wasn't it?
A. Yes, sir.
Q. Undressing and getting ready to go to work?
A. Yes, sir.
Q. Changing their street clothes and putting on their working clothes, that is true, Miss Jackson?
A. Yes, sir.
Q. That was the usual hour; you had all registered on or not, before you went up into this dressing room?
A. Yes, sir.
Q. And Mr. Frank knew the girls would stop there?
A. Yes, sir.
Q. After registering?
A. Yes, sir.
Q. Now, did you hear or not any talk about Mr. Frank going around and putting his hands on the girls?
A. No, sir.
Q. Was that before or after he had run in the dressing room?
A. I don't remember.

Q. Well, he pushed the door open and stood in the door, did he?
A. Stood in the door.
Q. Looked in and smiled?
A. Yes, sir.
Q. Didn't you say that?
A. I don't remember now, he smiled or made some kind of a face which looked like a smile, like smiling at Ermilie Mayfield.
Q. At Ermilie Mayfield, that day she was undressed?
A. But he didn't speak, yes sir.
Q. He didn't say a word, did he?
A. No, sir.
Q. Did he say anything about any flirting?
A. Not to us, no, sir.

These questions and answers were objected to for the reasons above stated, and for the further reason that a statement showing improper conduct of Frank in going into the dressing rooms with girls, while improper, was intended to create prejudice against him and in no way elucidated the question as to whether he was or was not the murderer of Mary Phagan.

Movant contends that the act that the defendant had put his character in issue is no reason why reported or actual facts of immorality should be admitted in evidence over his objection. The defendant's reputation or character for immorality or loose conduct with women are not relevant subjects for consideration in determining whether the defendant has or has not a good character when such good character is considered in connection with a charge for murder.

44. Because the Court permitted the Solicitor to ask and have answered by the witness Harlee Branch the following questions, said questions and answers dealing with an incident occurring at the pencil factory, wherein Conley, after having made the third affidavit in the record purported to re-enact the occurrence between himself and Frank on April 26th, wherein the body of Mary Phagan was taken from the office floor to the cellar of the factory:

Q. Now, Mr. Branch, take this stick and that picture, and take up Conley now, and give every move he made?
A. Am I to give you the time he arrived there? (Pencil factory.)
Q. Yes, give the time he arrived.
A. I will have to give that approximately; I was to be there at 12 o'clock, and I was a few minutes late, and Conley hadn't arrived there then, and we waited until they brought him there, which was probably ten or fifteen minutes later; the officers brought Conley into the main entrance here and to the staircase, I don't know where the staircase is here—yes, here it is, (indicating on diagram) and they carried him up there, and they told him what he was there for, and questioned him, and made him understand that he was to re-enact the pantomine.
Q. Just tell what Conley did?
A. After a few minutes conversation, a very brief conversation, Conley led the officers back here and turned off to his left to a place back here, I guess this is it (indicating on diagram) right where this is near some toilets, and he says:

Q. Go ahead.

A. He was telling his story as he went through there, and he said when he got up there, he went back and he said he found this body back in that place.

Q. Go ahead and tell what he said and did.

A. He was talking constantly all the time, I don't know how he made out a part of his story.

Q. Go ahead now, and state what Conley did and said as he went through that factory?

A. Well when he got back —. After reaching this point at the rear left side of the factory, described the position of the body, as he stated it, he stated the head was lying towards the north and the feet towards the south, as indicated, and there was a cord around the neck.

Q. State what he said, what he said Mr. Frand did and said.

A. He didn't state how long it took for the various movements.

Q. (By the Court): Did you time it?

A. No, sir, I know the time I arrived there and the time I left the factory.

Q. First, I want you to state what he said he did, and what he said Mr. Frank did, and then come up on the time business.

A. I don't quite understand what I am to do.

Q. Just go ahead and tell what Conley said he said, and what Conley said Mr. Frank said, and show what Conley did the day you were over there, take it up right back here where the body was and go on with it, leaving out, however, what he said about the cord and all that.

A. He said when he found the body, he came up to Mr. Frank, called to him from some point along here, I should judge (indicating on diagram), I don't understand this diagram exactly, and told him the girl was dead, and I don't know exactly what Mr. Frank said, I will try to eliminate as much of that conversation as I can. Anyhow, he said he came on up where Mr. Fank was, and that he was instructed to go to the cotton room, where he showed us, I don't know, it must be on the same side of the building, about here, I judge, (indicating) and he went in there, he showed us the cotton room, and he said he went back, and he did go back, lead us back, and told about taking up the body, how he brought it on up on his shoulder, and then in front of a little kind of impression of the wall, said he dropped it, and he indicated the place, and then he came up and told Mr. Frank about it, that he would have to come and help him, or something like that, and that Mr. Frank came back and took the feet, I believe, he said, and he took the head, and they brought the body up to the elevator and put it on the elevator.

Q. (By the Court): Was he going through all that thing?

A. Yes sir, he was enacting this all the time, and talking all the time. He described how the body was put on the elevator, and he said Mr. Frank run the elevator down, and he went on down the elevator.

Q. (By the Court): Did he go down in the elevator?

A. On this trip, yes, sir, he went down in the elevator to the basement, and he said Mr. Frank helped to take the body out, and they dropped it there, and Mr. Frank told him to take it up and carry it back, and he put the body on his shoulder and carried it back to this sawdust which is away back here, and that he came on back and there was something in here which he said he threw on this trash pile, and Mr. Frank was up, he said, in the cubby hole, he said, somewhere back there, and later he led us up there, and that Mr. Frank told him to run the elevator up, so Conley and the officers and the rest of us who were with him came up on the elevator, and when they got to the first floor, just before getting to the first floor, he said this was where

Mr. Frank got on the elevator, Mr. Frank was waiting there for him; then they brought the elevator on up to the second floor, and he had them to stop the elevator just, I suppose, a foot, or a little more below the landing, and he said Mr. Frank jumped off when the elevator was about that point, and after getting up, he said Mr. Frank went around the elevator to a sink that he showed us back ~~of the~~ elevator, to wash his hands, and he waited out in front, and he said he shut off the power while Mr. Frank was gone around there, and when Mr. Frank came back, they went in the office, and he led us in the office through—there is an outer office there, and he come in this way, and come through in this office back there, this inner office, and he indicated Mr. Frank's desk and a desk right behind it, I presume this is the two desks (indicating) that Mr. Frank sat down in a chair at that desk, and he told him to sit at this other desk, and Mr. Frank told him to write some notes, and he was asked by some of the officers to write what Mr. Frank had told him to write, and he sat down there and wrote one note, and I believe—I know he wrote one note, and I don't know whether he wrote one or two, and that Mr. Frank handed him some money and that later he took it back, and I don't remember whether he gave him the cigarettes and money before or after this, I don't recall. Anyway, when he was in there, after he had written the notes for the officers, I found it was time for me to get in the office with my copy, he hadn't finished, he was still sitting there, and I telephoned into the office for relief, someone to relieve me, and I went to the office, and I left him there in this office, and I went in.

Q. What time was it when Conley got there?

A. I should judge it was a quarter past twelve, I didn't look at my watch.

Q. ~~A~~ quarter past twelve, what time did you get there?

A. I must have gotten there five minutes before he did.

Q. Then what time did you leave?

A. I left about one o'clock.

Q. What time did he begin?

A. They rushed him right up the steps and probably two or three minutes after he got up there, he began this enactment, and he went very rapidly, in fact, we sort of trot to keep behind him.

Q. You say you did keep behind him, were any questions asked him during that?

A. Constantly, yes, sir.

Q. How many people were asking him questions.

A. Well, I suppose four or five of the officers.

Q. How much of the talking that Conley did have you cut out?

A. Well, I have cut out a good deal, I have no way of indicating how much.

Q. Well, did he do or not more talking that you have stated?

A. A great deal more.

Q. A great deal more? How much more would you say?

A. I have no way of estimating, he was talking constantly, except when he was interrupted by questions.

Q. Now, Mr. Branch, do you know the amount of time that Conley spent in this? First, you ~~say you got there at a quarter past twelve~~, did you?

A. I didn't time it, but it must have been, because I was endeavoring to get there at twelve o'clock, and when I got to the office from police station, it was five or ten minutes after twelve, and I walked down just about a block and a half.

Q. And Conley got there at what time?

A. He came just, I should say, five minutes after I did, not longer than five minutes.

Q. Not longer than that, and he got there at 12:20, then; and what time did you go away?

A. I left a little after one.

Q. How much after one?

A. I do not know, probably five or ten minutes.

Q. One-ten then; now, how much of the time during that time you were there did it take Conley to act what he acted, leaving out the conversation he had with the different men?

A. That would be a difficult thing for me to estimate, while he was acting, he was acting very rapidly, he kept us on the run.

Q. All right; now, leave out now the time that it took this man to answer the questions that were put to him by yourself and other men that accompanied him through there, leave that out now and give us your best opinion as to how long it took Conley to go through that demonstration?

A. There was no way to do that, there was no way to disassociate the time, and find out the difference between the two, between the time he was acting and talking; I didn't attempt to do that; in fact, the only time I was interested in was the time I would have to get back to the office.

Q. You got to the office, you say about 1:10?

A. Yes, sir.

Q. What time, then, you say, about, you left the pencil factory?

A. I left the pencil factory between five and ten minutes after one.

Q. You left the pencil factory then at about 1:10?

A. Yes, between 1:05 and 1:10.

The defendant objected to this testimony, because (a) this so-called experiment made with Conley was solely an effort upon his part to justify his story; (b) the sayings and acts of Conley, testified about as aforesaid were the sayings and acts of Conley, not under oath, had and made without the right of cross examination, the net result of which is but a reptition of Conley's story to the jury, without the sanction of an oath, and without cross examination. That Conley went to the factory immediately after making his last affidavit; that that last affidavit is not the way he tells the story on the stand; that he tells it wholly differently on the stand; at least differently in many particulars; that it can not help the jury for Conley to go and illustrate that affidavit when he says now on the stand that much of it was a lie, and that it did not happen that way at all; that this evidence was of another transaction, not binding on this defendant.

45. Because the Court declined to allow Dr. David Marx to give testimony in behalf of the defendant as to the character of the Jewish organization known as B'Nai Brith. Defendant's counsel stated at the time that Dr. Marx would testify that while the B'Nai Brith was an international Jewish charitable organization, its charity did not extend to giving aid to persons charged with a violation of the criminal law, as was Mr. Frank in this case.

The State objected to permitting Dr. Marx to make the answer sought, and the Court declined to permit the testimony to go to the jury.

46. Because the Court permitted the witness Mrs. J. J. Wardlaw, who before her marriage was Miss Lula McDonal, to be asked by the Solicitor-General the followning questions and to make the following answers:

Q. You never knew of his improper relations with any of the girls at the factory?

A. No, sir.

Q. Now, did you ever, do you know, or did you ever hear of a girl who went with Mr. Frank on a street car to Hapeville the Saturday before Mary Phagan was murdered?

A. No, sir.

Q. On the same street car with Hermes Stanton and H. M. Baker and G. S. Adams?

A. No, sir.

Q. And about his putting his arm around her and trying to get her at various places to get off with him?

A. No, sir.

Q. And go to the woods with him?

A. No, sir.

Q. She was a little girl that got on at the corner of Forsyth and Hunter Streets, there where the car passes?

A. No, I don't know that.

Q. You never heard of it at all?

A. No, sir.

Q. The Saturday before?

A. No, sir.

Q. You say you have never heard of any act of immorality on the part of Mr. Frank prior to April 26, 1913?

A. No, sir, I did not.

Q. You never talked with Hermes Stanton or H. M. Baker, the conductor or motorman?

Q. I will put it that way then, you never heard that, the Saturday before little Mary Phagan met her death, Mr. Frank went out on the Hapeville car on which Hermes Stanton and H. M. Baker were in charge, and that he had his arm around the little girl, and that he endeavored at various places to get that little girl to get off the car and go to the woods with him?

A. No, sir.

Q. You never heard such a statement as that at all by anybody?

A. No, sir, I did not.

The defendant objected to the above questions made by the Solicitor-General, because while the witness denied any knowledge by hearsay or otherwise of the wrong asked about, the mere asking of such questions, the answers to which must have been irrelevant and prejudicial was harmful to the defendant, and the Court erred in permitting such questions to be asked, no matter what the answers were.

The Court further erred because, although the defendant had put his character in issue, the State could not reply by proof or reputation of improper or immoral conduct with women. The reputation for lasciviousness is not involved in that general character that is material where the charge is murder.

47. Because the Court permitted the witness, W. E. Turner, at the instance of the Solicitor and over the objection of the defendant made at the time the evidence was offered that same was irrelevant, immaterial and dealt with other matters than the issues involved, to testify:

"I saw Mr. Frank talking to Mary Phagan on the second floor of the factory about the middle of March. Frank was talking to her in the back part of the building. It was just before dinner. I do not know whether anybody was in the room besides Mr. Frank and Mary. After I went in there two young ladies came down and showed me where to put the pencils. Nobody was in there but Mr. Frank and Mary at the time I went in there. Mary was going to her work when Mr. Frank stopped to talk to her. Mary told him that she had to go to work. Mr. Frank was talking about he was the Superintendent of the pencil factory. He told her that he was the Superintendent of the pencil factory and that he wanted to speak to her and she told him she had to go to work and I never did hear any more replies from either one. I left just when she told him she had to go to work. Mary backed off and Frank went on towards her talking to her. That was before I left, was when she backed off, and the last words I heard him say was he wanted to talk to her. Mary did not stand still; she moved backward about 3½ feet. While she was going backwards Mr. Frank was talking to her and walking towards her. Mr. Frank said 'I am the superintendent of the pencil factory and I want to speak to you,' and Mary said, 'I have got to go to work.'"

The Court, over the objections made as is above stated, permitted this testimony to go before the jury and in so doing committed error, for the reasons above stated.

This was prejudicial to the defendant, because the transaction testified about was a transaction distinct from those making the issues in the present case, threw no light on that trial and tended to prejudice the jury against Frank upon the theory that he was seeking to be intimate with this little girl.

48. Because the Court erred in admitting to the jury, over the objection of defendant's counsel, made at the time the evidence was offered that the same was irrelevant, immaterial, dealt with collateral matters to the confusion of the issues on trial, the following extracts from the minutes of the Board of Health of the State of Georgia:

"The President then addressed the Board at length on his reasons for thinking that the Secretary should be requested to resign, the subjects dealt with being too enormous and too lengthy to be included here in their entirety. After the President's address, the Board adjourned and reassembled again at four o'clock in the afternoon, at which time Dr. Harris' side of the controversy was heard."

"The President (of the Board, Dr. Westmoreland), then addressed the Board at length on his reasons for thinking that the Secretary should be requested to resign, the subjects dealt with being too numerous and too lengthy to be included here in their entirety. After the President's address, the Board adjourned and reassembled again at four o'clock in the afternoon, at which time Dr. Harris' side of the controversy was heard."

"The Secretary not having been present at what transpired following this was not in a position to take note as to the proceeding, but was informed by

the members on adjournment that it was their wish that he should still continue as Secretary and Director of the Laboratory.''

''The President then made a short statement in support of his protest against the Secretary, and reiterated some of the charges made at the previous meeting, and in addition, made objection against the Secretary's action in sending out antitoxine No. 64, which had been shown by tests made in Washington to be of less potency than it was originally labelled and also condemning the Secretary for replacing Dr. Paullin and personally taking up the investigation of the malarial epidemic around the pond of the Central of Georgia Power Company. The President then stated that he would publish the charges against the Secretary if the Board did not take such action regarding them as he thought right and proper. At the conclusion of the President's address, a talk was made by Mr. Doughty, in which he took exception to the former's attitude, and insisted—''

''At the conclusion of the President's address a talk was made by Mr. Doughty, in which he took exception to the former's attitude, and insisted that every member of the Board wished to do what was best for the State Board of Health and the people of Georgia, and that everyone connected with the Board of Health should be willing to bow to the decision of this body. He deprecated strongly the idea of giving to the press charges the publication of which could do no good, and which could only result in harm.''

''On the President and Secretary being recalled an hour later, the President pro tem. Mr. Benedict, read the following resolution, which had been unanimously adopted by the Board on motion of Mr. Harbin, seconded by Dr. Brown, the resolution having been drawn by a committee appointed by the Board, consisting of Doctors Benedict, Taylor and Doughty.''

''That the committtee appointed to frame a resolution expressing the opinion of the Board with regard to the charges preferred against the Secretary by the President of the Board in a report to the Governor, and upon which they are called upon to act, beg to report as follows:

''Resolved, That the members of the Board present, after carefully considering the charges and all evidence in its possession, unanimously agree that while there have been certain slight irregularities in the conduct of some departments of the laboratories of the State Board of Health, which should be corrected, these irregularities have not been so important in charactr or result as to call for or warrant the discontinuance of Dr. Harris as Secretary and director of laboratories as demanded by the President. The Board further directs that a copy of this resolution be transmitted to the Governor.''

Following the reading of this resolution, Dr. Westmoreland tendered his resignation as President of the Board, a copy of which follows:

''Atlanta, Ga., Sept. 25th, 1911.

''To the members of the Georgia State Board of Health, Atlanta, Ga. Gentlemen: I hereby tender you my resignation to take effect at this meeting. Thanking you for the courtesies extended me, and for the honor conferred on me in the past, I am, very sincerely yours, W. F. Westmoreland, President.''

''Now, on pages 164 and 165; that is the letter to the Governor, adopted by the Board, and sent to his Excellency, John M. Slaton, Governor, Atlanta, Ga.''

The Court admitted these extracts from the minutes over the objections of defendant, as above stated, and in so doing committed error for said reasons.

This was prejudicial to the defendant and took the minds of the jury from the issues on the trial and centered them upon a medical row had between

Dr. Westmoreland who had once been president of the State Board of Health and Dr. Harris, who had been and was its Secretary. This row between the doctors stated is utterly immaterial and irrelevant and was harmful to the defendant because it tended to discredit the testimony of Dr. Westmoreland who resigned from the Board and to sustain the testimony of Dr. Harris, who remained as Secretary of the Board after Dr. Westmoreland's resignation.

49. Because the court permitted the witness E. H. Pickett to testify over the objection made when the testimony was offered that it was wholly and entirely irrelevant, immaterial, incompetent, illegal, dealt with transactions between other parties, threw no light on the issues involved and did not bind the defendant, to testify:

"Minola McKnight at first denied that she had been warned by Mrs. Selig when she left to go to the solicitor's office on May 3rd not to talk about the case, that when asked she stated that she was on that date instructed not to talk. At first, Minola stated that her wages had not been changed by the Seligs, that she was receiving the same wages as before the crime. At first she said her wages hadn't been changed and then she said her wages had been raised, just what I can't remember because it varied from one week to another; she said the Selig family had raised her wages. The only statement she made about Mrs. Frank giving her a hat was when she made the affidavit, we didn't know anything about that hat before."

The Court permitted this testimony to go to the jury over the objections above stated and therein erred. The Court stated that he admitted this testimony on the idea that the ground of impeachment for Minola McKnight had been laid.

This testimony was prejudicial to the defendant, because the Court in admitting it, left the jury to consider the statements of Minola McKnight, that Mrs. Selig had instructed her not to talk, that the Seligs since the crime had raised her wages; that Mrs. Frank had given her a hat.

50. Because the Court permitted the witness J. H. Hendricks to testify, at the instance of the solicitor and over the objection of the defendant, that the same was irrelevant, incompetent and immaterial, that:

"I am a motorman for the Georgia Railway & Power Company, running on April 26, 1913, on Marietta to Stock Yards and Decatur Street car. The Cooper and English Ave. run is on the same route from Broad and Marietta Street to Jones Ave. Prior to April 26, 1913, the English Ave. car with Mathes and Hollis on it did run to Broad and Marietta Streets ahead of time; how much ahead I can not say positively. About April 26th and subsequent thereto Mathes and Hollis, in charge of the English Ave. car, about twelve o'clock when they were due to get off at dinner did come in ahead of time. I have seen them two or three times ahead of time. At the time they were relieved, I got to Broad and Marietta streets about 12:06. When I would get there on schedule time, I don't know where Mathes and Hollis were, they should have been coming in. When Hollis would be at the corner of Broad and Marietta streets, and his car would not be there and my car would be on time, Hollis would leave Broad and Marietta street for dinner on my car."

The Court permitted this testimony to go to the jury over the objections above stated and in doing so committed error for the reasons stated. Movant contends that this was prejudicial to the defendant because it was a material matter to determine at what time his car got to Marietta and Broad streets on the day of the murder, and it confused and misled the jury to hear testimony as to when he got there upon days other than the day of the murder.

51. Because the Court permitted the witness J. C. McEwen, at the instance of and over the objection of defendant that the same was immaterial, incompetent and irrelevant, to testify:

"I am a street car motorman. Previous to April 26th I ran on the Cooper Street route something like two years. On April 26th, 1913, I was running on Marietta and Decatur Streets. The Cooper Street car or English Ave. car run by Hollis and Mathis was due in town at seven minutes after the hour; the car I was running was due at 12:10. The White City car got into the center of town at five minutes after the hour. About April 26, 1913, the Cooper Street car or English Ave. car frequently cut off the White City car due in town at 12:05. The White City car is due there before the English Ave. car; it is due five minutes after the hour and the Cooper Street car is due seven minutes after the hour. In order for the English Ave. car to cut off the White City car, the Cooper Street car would have to be ahead of time, that is, the English Avenue car would have to be ahead of time. If the White City car was on time at 12:05, the English Ave. car would have to get there before that time to cut it off. That happens quite often. I do know that the car that Mathis and Hollis were running did come into town ahead of time very often, especially if it is a relief trip. I have known it to be four or five minutes ahead of time."

The Court admitted this testimony over the objections above made and in doing so committed error for said reasons.

This was prejudicial to the defendant, because it was material to his defense to show, as sworn to by the conductor and motorman, that the English Ave. car reached the corner of Broad and Marietta streets at 12:07, and it misled the jury to admit evidence tending to show that at other times this same car run by Mathis and Hollis reached the city ahead of time.

Nor would it be material for the purpose of contradicting the motorman who swore that he did not run ahead of time any time for whether he ran ahead of time at other times would be immaterial, and a witness can be impeached only as to misstatements of fact material to the issues in the case.

52. Because the Court permitted, at the instance of the solicitor and over the objection of the defendant, made when the evidence was offered, that same was irrelevant, immaterial and incompetent, the witness Henry Hoffman, to testify as follows:

"I am an inspector for the Georgia Railway & Power Co. I know Mathis, the motorman who runs on the English Ave. car. He is under me a part of the day. He was under me on April 26th, from 11:30 a. m. to 12:07 p. m. Under the schedule, his car is due at the junction of Broad and Marietta Sts. at 12:07. Prior to the beginning of this trial, I have known Mathis' car to cut off the Fair Street car. Under the scedule for the Fair St. car, it arrives in

the center of town, junction of Broad and Marietta, at 12:05. At the time Mathis was running ahead of this Fair Street car, which is due at 12:05 at the junction of Marietta and Broad Sts., the Fair Street car would be on its schedule. I have compared my watch with Mathis' watch prior to April 26th. There was at times a difference of from 20 to 35 or 40 seconds. We were both supposed to carry the right time. When I compared my watch with Mathis' I suspect mine was correct, as I just had left it the day I looked at Mathis' watch, and mine was 20 seconds difference, and I had gotten mine from Fred Williams that day. His watch was supposed to compare with the one at the barn. I called Mathis' attention to running ahead of time once or twice that I know of. Men coming in on relief time at supper and dinner, coming to the junction of Broad and Marietta, customarily come in ahead of time."

The Court admitted this testimony over the objections above made, and in doing so committed error for said reasons.

This was prejudicial to the defendant, because it was material to his defense to show, as sworn to by the conductor and motorman, that the English Ave. car reached the corner of Broad and Marietta Streets at 12:07, and it misled the jury to admit evidence tending to show that at other times this same car run by Mathis and Hollis reached the city ahead of time.

Nor would it be material for the purpose of contradicting the motorman who swore that he did not run ahead of time any time, for whether he ran ahead of time at other times would be immaterial, and a witness can be impeached only as to misstatements of fact, material to the issues in the case.

53. Because the Court permitted the witness J. M. Gantt, over the objection of the defendant, made when the evidence was offered that the same was irrevelant and immaterial, to testify substantially as follows:

"The clocks of the pencil company were not accurate. They may vary all the way from three to five minutes in 24 mours."

The Court admitted this testimony over the objections made and in doing so committed error, for the reasons stated.

This was prejudicial to the defendant, because whether the clocks were or were not accurate on April 26th was material to his defense. The witness Gantt had not worked at the factory for three weeks and the fact that the clocks were not keeping accurate time three weeks before the trial was immaterial, and the evidence thereon tended to mislead and confuse the jury. Gantt had not worked at the factory during the three weeks just prior to the crime, and his testimony as to the clocks related to the time he did work at the factory.

54. Because the Court permitted the witness Scott to testify in behalf of his Agency, over the objection of the defendant, that the same was irrelevant immaterial and incompetent, substantially as follows:

"I got hold of the information about Conley knowing how to write through my operatives that I had investigating while I was out of town. McWorth told me in person when I returned."

The Court permitted this testimony over the defendant's objections, as above stated, and in doing so committed error. This was prejudicial to the defendant, because the solicitor contended that the failure of Frank to report the fact that Conley could write, was a circumstance against Frank's innocence, and he sought to show by the above testimony that the detectives were forced to get that information from someone other than Frank.

55. Because the Court permitted the witness L. T. Kendrick over the objection of the defendant, made at the time the evidence was offered that the same was irrelevant, immaterial and incompetent, to testify substantially as follows:

"The clock at the pencil factory, when I worked there, needed setting about every 24 hours. You would have to change it from about three to five minutes, I reckon."

The Court permitted this testimony to be heard over the above stated objections of the defendant, and in doing so committed error.

Kendricks had not worked at the factory for months and whether or not the clock was correct at that time was immaterial and tended to confuse the jury in their effort to determine whether or not the clock was accurate upon the date of the tragedy.

56. Because the Court, over the objection of the defendant made at the time the evidence was offered that the same was irrelevant, immaterial, incompetent, illegal and prejudicial to the defendant, permitted the witnesses, Miss Maggie Griffin, Miss Myrtie Cato, Mrs. C. D. Donagan, Mrs. H. R. Johnson, Miss Marie Karst, Miss Nellie Pettis, Miss Mary Davis, Mrs. Mary E. Wallace, Miss Carrie Smith and Miss Estelle Winkle to testify that they were acquainted with the general character of Leo M. Frank prior to April 26, 1913, with reference to lasciviousness, and his relations to women and girls and that it was bad.

The Court admitted this evidence over the objections above stated, and in doing so erred for the reasons herein stated.

In determining general character in cases of murder, lasciviousness or misconduct with women is not one of the traits of character involved. The traits of character involved are peacableness, gentleness, kindness, and it is utterly immaterial to prove bad character for lasciviousness in a murder trial.

To permit this evidence was highly prejudicial to the defendant. It attacked his moral character and while such attack would not tend to convict him of murder nor show him a person of such character as would likely commit murder, its introduction prejudiced the jury against him.

57. Because the Court permitted the witness Miss Dewie Hewell, over the objection of the defendant that the same was irrelevant, immaterial, incompetent, illegal and dealt with separate and distinct matters and issues from this case, to testify:

"I am now staying in the Station House. Before I came to Atlanta to testify I was in Cincinnati, Ohio, in the Home of the Good Shepherd. I worked at the Pencil Company during February and March, 1913, I quit there in March. I worked on the fourth floor and worked in the metal room, too. I have seen Mr. Frank hold his hand on Mary's shoulder. He would stand pretty close to Mary when he would talk to her, he would lean over in her face."

The Court permitted this testimony over the objection of the defendant, made as is above stated, and in doing so committed error. This was prejudicial to the defendant, because it was introduced to show an effort to be criminally intimate with Mary and inflamed and misled the jury.

58. Because the Court permitted the witness, Miss Cato, over the objection of the defendant that the same was incompetent, illegal and immaterial, to testify substantially as follows:

"I know Miss Rebecca Carson. I have seen her go twice into the private ladies' dressing room with Leo M. Frank."

The Court permitted this testimony over the objection of the defendant made as is aforesaid and in doing so committed error. The Court stated that this evidence was admitted to dispute the witness they had called.

It was wholly immaterial to the issues involved in this case whether Frank did or did not go into a private dressing room with Miss Carson. It did, however, prejudice the jury as indicating Frank's immorality with reference to women.

59. Because the Court erred in permitting the witness Maggie Griffin to testify over the objection of the defendant made when the testimony was offered that the same was immaterial, illegal, and incompetent, to testify substantially as follows:

"I have seen Miss Rebecca Carson go into the ladies' dressing room on the fourth floor with Leo M. Frank. Sometimes it was in the evening and sometimes in the morning during working hours. I saw them come in and saw them come out during working hours."

The Court permitted this testimony to go to the jury over the objection of the defendant made as is aforesaid and in doing so committed error. The Court stated that this evidence was admitted to dispte the witnesses they had called.

It was wholly immaterial to the issues involved in this case whether Frank did or did not go into a private dressing room with Miss Carson, it did, however, prejudice the jury as indicating Frank's immorality with reference to women.

60. Because the Court refused to give the following pertinent legal charge in the language requested:

"The jury are instructed that if under the evidence they believe the theory that another person committed this crime is just as reasonable and just as likely to have occurred as the theory that this defendant committed the crime, that then the evidence would not in a legal sense have excluded every other reasonable hypothesis than that of the prisoner's guilt and you should acquit him."

This request was submitted in writing and was handed to the Court before the jury had retired to consider of their verdict and before the Court began his charge to the jury.

This request was a legal and pertinent one, particularly adjusted to the facts of the case and should have been given, and the Court in declining to give it committed error, although the general principle involved might have been given in the original charge.

61. Because the Court refused to give the following pertinent legal charge in the language requested:

"If the jury believe from the evidence that the theory or hypothesis that James Conley may have committed this crime is just as reasonable as the theory that the defendant may have committed this crime, then, under the law, it would be your duty to acquit the defendant."

This request was submitted in writing and was handed to the Court before the jury had retired to consider of their verdict and before the Court began his charge to the jury.

This request was a legal and pertinent one, particularly adjusted to the facts of the case and should have been given, and the Court in declining to give it committed error, although the general principle involved might have been given in the original charge.

62. Because the Court refused to give the following pertinent legal charge in the language requested:

"The jury are instructed that in all cases the burden of proof is upon the State. The State only half carries that burden when it establishes a hypothesis of guilt, but also leaves a hypothesis of innocence. If both theories are consistent with the proved facts, the very uncertainty as to which is correct requires that the jury shall give the benefit of the doubt to the defendant. But when the defendant relies upon circumstantial evidence, he is not obliged to remove the doubt. It is sufficient if he create a reasonable doubt. He is not obliged to prove his innocence. He may rely upon the failure of the State to establish his guilt. If the proved facts in the case establish a hypothesis consistent with the defendant's innocence and sufficient to create a reasonable doubt of his guilt, this is sufficient to acquit him and it is not necessary that he should go further in his proof and exclude every possible idea of his guilt. No such burden is upon the defendant."

This request was submitted in writing and was handed to the court before the jury had retired to consider of their verdict and before the court began his charge to the jury.

This request was a legal and pertinent one, particularly adjusted to the facts of the case and should have been given, and the Court in declining to give it committed error, although the general principle involved may have been given in the original charge.

63. Because the Court declined to give the following pertinent legal charge in the language requested:

"No presumption can arise against the defendant, because of failure to cross examine any witnesses put up by the State, that the defendant was guilty of any particular acts of wrong-doing. You should not, therefore, consider that this defendant because of such failure to cross examine any state's witnesses, has been guilty of any particular acts of wrong-doing."

The above request was submitted to the court in writing before the jury retired to consider their verdict and before the charge was given to the jury.

The above is a correct statement of the law and applicable to the present issue, and the court erred in declining to give it.

The failure to give it was prejudicial to the defendant, for the reason that quite a number of character witnesses were introduced by the state and not cross-examined by the defendant. The solicitor urged before the jury that this failure to cross-examine was evidence of the fact that a cross-examination would have brought out particular acts of wrong-doing which would have affected the defendant's character.

64. Because the court erred in declining to grant a mistrial on motion of the defendant, made by his counsel, made after the argument of the solicitor and before the charge of the court. The motion made by defendant for a mistrial is as follows:

"I have a motion to make, Your Honor, for a mistrial in this case, and I wish to state the facts on which I base it, and I wish the stenographer to take it down, and we propose to prove every fact stated in the motion unless the court will state that he knows the facts and will take cognizance of them without proof.

"First. That counsel requested before this trial began that the court room be cleared of spectators.

"Second. When the court declined to rule out the evidence as to other alleged transactions with women, by Jim Conley, the audience in the court room, who occupied nearly every seat, showed applause by the clapping of hands and stamping of feet and shouting in the presence of the court; the jury was in a room not over twenty feet from the court room—that room back there (indicating), and heard the applause. The court refused to declare a mistrial or to clear the court room on motion of the defendant.

"Third. That on Friday, August 22nd, when the trial was on and the court had just adjourned for the day, and the jury was about 200 feet from the court house proceeding north on Pryor Street, as Mr. Dorsey, the solicitor general, was leaving the court house, a large crowd assembled in front of

the court house and, in the hearing of the jury, cheered and shouted 'Hurrah for Dorsey' in the hearing of the jury.

"Fourth. That on Saturday, August 23, 1913, while the trial was still on, and when the court adjourned and Mr. Dorsey emerged from the court room a large crowd, standing on the street, applauded and cheered Mr. Dorsey, shouting 'Hurrah for Dorsey.' The jury at this time was in a cafe at lunch, about 100 feet away, and a portion of the crowd moved up in front of the cafe, at which the jury were at lunch, and in the hearing of the jury shouted 'Hurrah for Dorsey.'

"Fifth. On the last day of the trial, a large crowd, including many women, had assembled in the court room before court opened, taking up every seat in the court room. The jury were in their room not over 20 feet from the court room, and as Mr. Dorsey entered the room, the crowd applauded loudly by clapping of hands and stamping of feet, all in the hearing of the jury. The court admonished the people that if the applause was repeated, he would clear the court room.

"Now, we move upon those facts, which tend to coerce and intimidate and unduly influence this jury, that the court here and now declare a mistrial, and we stand ready to prove each and every fact there and we offer to prove them. Now, if your Honor will take cognizance of those facts as stated, then, of course it will dispense with proof. If your Honor does not take cognizance of them, we are ready to prove them by numbers of people who heard them, including myself; I have heard it, all of it, and the conduct has been most disgraceful. The defendant has not been accorded anything like a fair trial and I am disgusted, may it please your honor, with the unfairness of those members of the public who make such an exhibition of themselves when a man is on trial for his life. I am not afraid of them; I hope nobody else is afraid of them; but the natural tendency is to intimidate a jury, to coerce a jury, and I have never seen a trial so hedged in and surrounded with manifestations of public opinion. I make the motion to declare a mistrial and stand ready to prove these facts. If the court knows them, the court can take cognizance of them."

Upon this motion the Court stated that as to part of the facts he knew and part he did not know. That what occurred on August 25, 1913, the last day of the trial, he did know, as it took place in his presence; that he did hear cheering when Mr. Dorsey went out on the occasion mentioned, but as to what the crowd said, outside of the whooping and holloing, he did not know, and that he did hear the applause in the court room when the court declined to rule out the evidence as to several alleged transactions with women, by Jim Conley.

In support of this motion to declare a mistrial, the following evidence was introduced:

Mr. Deavours testified that he was a deputy sheriff of Fulton County in charge of the jury on Saturday when Mr. Dorsey was applauded in front of the court house as he left that house. When the applauding begun, the jury was in or near the German Cafe, where they went to dinner. When the applause first begun they were about 100 feet from the court house, entering the cafe. That he heard the applause, but did not hear the crowd hollo "Hurrah for Dorsey;" he heard the holloing and cheering and the jury could have heard what he did. That the applause he heard was outside of the cafe, he did not hear the cheering from the inside of the cafe. That he did not remember how many people came up in front of the cafe. No one came in the cafe into the room where the jury was, that is, in the room in the rear.

Mr. Arnold testified: I wish to state that on Friday when court adjourned Mr. Dorsey left the court room and as he left the court room I heard loud cheering at the front. On Saturday, when court adjourned, I asked Mr. Dorsey not to go out until the jury had gotten away from where they could hear the noise of the crowd, for fear they should cheer him again as he left the court room. Mr. Dorsey said all right, and remained in the court room for a while. Finally, I thought the crowd had left, and I presume Mr. Dorsey thought the crowd had left, and of course I do not claim that he is responsible for the cheering, but he finally left the court room and went out, and I went out with Mr. Rosser shortly afterwards, behind him. As Mr. Deavours says, it turned out that the jury had not at that time entered the German Cafe, although I didn't see them. I saw people up there but I didn't know who they were, but as Mr. Dorsey left the court room there were loud and excited cheers and cries of "Hurrah for Dorsey." My judgment is that you could have heard the cheers and cries of "Hurrah for Dorsey" without any trouble, all the way from the court house up Alabama street; that is my opinion. They kept cheering him and as my friend went across the street the cries continued until he got clear into the Kiser building. The first cheering was on Friday afternoon, but the second time was on Saturday when I asked Mr. Dorsey not to go out. I asked Mr. Dorsey not to go out until the crowd dispersed. He stayed in; I am not trying to blame Mr. Dorsey for it. I didn't know the crowd was waiting out there, and I presumed the jury had gotten out of hearing but found they had not. I didn't hear the case mentioned; I heard no allusion to this case but I heard cries of "Hurrah for Dorsey," but on the other occasions—while I love for my friend to meet all the approbation that he may get from the public, I did think that it was an outrage, the crying and shouting; that is what I thought. If the jury were where Mr. Deavours said they were, they could hear; no trouble about hearing it, if they had good ordinary hearing. On Friday I was in the court room when I heard most of the crying; I do not know where the jury was then.

Charles F. Huber testified: I was in charge of the jury when they left the court room Friday afternoon. I do not know how far the jury had gotten before the crowd began cheering in front of the court house. I didn't know myself that they had cheered until the next morning. They didn't know it at all. I had charge of the rear end of the jury. I have good hearing and I heard no cheering.

After the introduction of this testimony, Mr. Arnold for the defense stated that he desired time to examine Mr. Pennington and Mr. Liddell, the other two bailiffs in charge of the jury, who were then absent and asked the court to give him time to make the proof.

After the hearing of this request and the above evidence, the Court ruled: "Well, I am going to charge this jury on this case, and I will give you an opportunity, don't you understand, afterwards, to complete your showing about that, but I will overrule the motion."

During the hearing of this motion for a mistrial and when the witness Charles F. Huber was on the stand and swore that he heard no cheering on the Friday afternoon referred to, and that the jury did not hear it, there was applause among the spectators, on account of the statement that the jury did not hear the cheering. Mr. Arnold called attention to the applause, stating to the Court that the crowd could not be held in even while they were making this investigation.

The Court paid no further attention to this applause than to ask, "What is the matter with you over there?"

In failing to grant the mistrial requested, the Court erred. The motion, taken in connection with the admitted and proven facts, movant contends, clearly show that the defendant was not having a fair trial by reason of the great excitement of the crowd. The court room was in an exceedingly small building, on the ground floor, and was crowded during the whole of the trial and defendant contends that this prejudice and animosity of the crowd against him, as shown by the frequent applause, necessarily reached the jury box and prevented him from having a fair trial.

As permitted by the Court, in his order just aforesaid, we attach hereto in support of this motion for new trial the affidavits hereto attached, marked Exhibits J to AA, both inclusive, and said Exhibits are hereby made a part of this motion for new trial.

65. Because the defendant contends he did not have a fair and impartial trial, by an impartial jury, as provided by the Constitution and laws of this State, for the following reasons, to-wit:

(a) On August 6, 1913, during the trial, the defendant's counsel moved to rule out the testimony of the witness Conley tending to show acts of perversion and acts of immorality on the part of the defendant, wholly disconnected with and disassociated from this crime. The Court declined to rule out said testimony and immediately upon the statement of the Court that he would let such testimony remain in evidence before the jury there was instant, pronounced and continuous applause throughout the crowded court room where the trial was being had, by clapping of hands and by striking of feet upon the floor.

While the jury was not then in the same room where the trial was being had, they were in a room about 50 feet from where the judge was sitting and about 20 feet from portions of the crowd applauding, and so close that perhaps the jury could have heard the applauding.

(b) And again during the trial, Mr. Arnold, one of the counsel for the defendant, in the presence of the jury, objected to a question asked by the solicitor, and the following colloquy took place:

Mr. Arnold: I object to that, your Honor, that is entering the orders on that book merely; that is not the question he is asking now at all.

The Court: What is the question he is asking now?

(Referring to questions asked by the solicitor-general.)

Mr. Arnold: He is asking how long it took to do all this work connected with it. (Referring to work done by Frank the day of the murder.)

The Court: Well, he knows what he is asking him.

(Referring to the solicitor-general.)

Upon this suggestion of the Court that the solicitor knew what he was doing, the spectators in the court room applauded by striking their hands together and by the striking of feet upon the floor, creating quite a demon-

stration. Defendant's counsel complained of the conduct of the spectators in the court room. The Court gave no relief except directing the sheriff to find out who was making the noise.

(c) During the examination by Mr. Arnold, counsel for the defendant, of V. H. Kreigshaber, a witness for the defendant, there was laughter in the audience sufficiently generally distributed throughout the audience and loud enough to interfere with the examination. Mr. Arnold called the Court's attention to the interruption for the purpose of obtaining some action from the Court thereon.

The Court stated that if there was other disorder, no one would be permitted in the court room the following day and requested the sheriff to maintain order.

(d) That during the trial, on Friday, August 22d, 1913, when the Court had just adjourned for the day, and the jury was about 300 feet away from the court house, proceeding north on Pryor Street, as Mr. Dorsey, the solicitor-general, was leaving the court room, a large crowd assembled in front of the court house, and in the hearing of the jury cheered and shouted "Hurrah for Dorsey."

(e) That during the trial, on Saturday, August 23, 1913, when court adjourned and Mr. Dorsey emerged from the court room, a large crowd, standing on the street, applauded and cheered him, shouting "Hurrah for Dorsey." At that time the jury was between the court house and what is known as the German Cafe and near enough to the crowd to hear the cheering and shouting. A portion of the crowd moved up in front of the cafe at which the jury were at lunch, and in the hearing of the jury shouted "Hurrah for Dorsey."

(f) On the last day of the trial, Monday, August 25th, 1913, a large crowd, including many women, had assembled in the court room before court opened, taking up every seat in the court room. The jury were in their room about 20 feet from the court room, and as Mr. Dorsey entered the room the crowd applauded loudly by clapping of hands and stamping of feet, which the jury perhaps could have heard. The court did nothing but admonish the people that if the applause was repeated, he would clear the court room.

(g) On Monday the last day of the trial after the argument of counsel had been had and the charge of the court had been given and the case was in the hands of the jury, when Solicitor Dorsey left the court room a very large crowd awaited him in front of the court house and shouted and applauded by clapping their hands and shouting, "Hurrah for Dorsey."

(h) When it was announced that the jury had agreed upon a verdict, the Judge of the Superior Court, his Honor, L. S. Roan, went to the court house which was a comparatively small room on the first floor, at the junction of Hunter and Pryor Streets, and found the court room packed with spectators. Fearful of misconduct among the spectators in the court room, the

Court of his own motion cleared the room before the jury announced their verdict. When the verdict of guilty was rendered, the fact of the rendition of such verdict was signaled to the crowd on the outside, which consisted of a large concourse and crowd of people standing upon Hunter and Pryor Streets. Immediately upon receiving such signal and while the court was engaged in polling the jury and before the polling ended, great shouts arose from the people on the outside, expressing gratification. Great applauding, shouting and halloing was heard on the streets and so great became the noise on the streets that the Court had difficulty in hearing the responses of the jurors as he polled them. These incidents showed, as the defendant contends, that the defendant did not have a fair and impartial jury trial and that the demonstration of the crowds attending court was such as to inevitably affect the jury.

The exhibits hereto attached marked J to AA inclusive are made a part of this ground.

66. Because that fair and impartial trial guaranteed him by the Constitution of this State was not accorded the defendant for the following reasons:

The court room wherein this trial was had was situated at the corner of Hunter and Pryor streets. There are a number of windows on the Pryor Street side looking out upon the street and furnishing easy access to any noises that would occur upon the street. The court room itself is situated on Hunter Street, 15 or 20 feet from Pryor Street. There is an open alleyway running from Pryor St., along by the side of the court house, and there are windows from the court room looking on to this alley and any noise in the alley can easily be heard in the court room. When Solicitor Dorsey left the court room on the last day of the trial, after the case had been submitted to the jury, a large and boisterous crowd of several hundred people was standing in the street in front of the court house and as he came out greeted him with loud and boisterous applause, taking him upon their shoulders and carrying him across the street into the Kiser building wherein was his office. This crowd did not wholly disperse during the interval between the giving of the case to the jury and the time when the jury reached its verdict, but during the whole of such time a large crowd was gathered at the junction of Pryor and Hunter streets. When it was announced that the jury had reached a verdict, his Honor, Judge L. S. Roan, went to the court room and found it crowded with spectators to such an extent as to interfere with the court's orderly procedure, and fearing misconduct in the court room, his Honor cleared it of spectators. The jury was then brought in for the purpose of delivering their verdict. When the verdict of guilty was announced, a signal was given to the crowd on the outside to that effect. The large crowd of people standing on the outside cheered and shouted and hurrahed at the outset of the poll of the jury, and before more than one juror had been polled to such an extent that the Court had some difficulty in proceeding with

the poll of the jury, which was then in progress, and not finished. Indeed, so great was the noise and confusion without that the Court heard the responses of the jurors during the polling with some difficulty. The Court was about 10 feet from the jury. In the court room was the jury, lawyers, newspaper men, and officers of the court, and among them there was no disorder.

The polling of the jury is an important part of the trial. It is inconceivable that any juror, even if the verdict was not his own, to announce that it was not, in the midst of the turmoil and strife without.

The exhibits J to AA inclusive are hereby made a part of this ground, and the Court will err if it does not grant a new trial on this ground.

67. Because the Court erred in failing to charge the jury that if a witness knowingly and wilfully swore falsely in a material matter, his testimony shall be rejected entirely, unless it be corroborated by facts and circumstances of the case or other creditable evidence.

The Court ought to have given this charge, although no written request was formally made therefor, for the reason that the witness Jim Conley, who testified as to aiding Frank in the disposal of the body, was attacked by the defendant as utterly unworthy of belief, and he admitted upon the stand that he knew that he was lying in the affidavits made by him, with reference to the crime and before the trial.

Especially ought this charge to have been given, because the Court, in his charge to the jury, left the question of the credibility of witnesses to the jury, without any rule of law to govern them in determining their credibility.

68. Because the Court permitted to be read to the jury, over the objection of the defendant made at the time the testimony was offered, that same was immaterial, irrelevant, incompetent, and not binding upon Frank a part of an affidavit made by the witness Minola McKnight, as follows:

"They pay me $3.50 a week, but last week she paid me $4, and one week she paid me $6.50. Up to the time of this murder I was getting $3.50 per week and the week right after the murder I don't remember how much she paid me, and the next week they paid me $3.50 and the next week they paid me $6.50, and the next week they paid me $4, and the next week they paid me $4. One week, I don't remember which one, Mrs. Selig gave me $5, but it wasn't for my work, and they didn't tell me what it was for, she just said 'Here is $5 Minola.'"

The Court permitted this part of the affidavit to be read to the jury over the objections above stated, and in doing so erred for the reasons stated.

This was prejudicial to the defendant, inasmuch as it permitted the affidavit of the witness Minola McKnight to be read to the jury as to transactions between herself and the Seligs, with which Frank had no connection, but which the solicitor-general insisted showed that Frank's relatives were seeking to influence this darkey by paying her money in addition to that which she earned. The Seligs and Minola McKnight had been asked

on cross examination if these statements in this affidavit were true, and had denied that these statements were true.

69. Because the Court erred in permitting Mr. Hooper, for the State, to argue to the jury that the failure of the defense to cross-examine the female witnesses who, in behalf of the State, had testified to the bad character of Frank for lasciviousness, was strong evidence of the fact that, if the defendant had cross-examined them, they would have testified to individual incidents of immorality on the part of Frank; that the defendant's knowledge that they would bring out such incidents was the reason for not cross-examining the witnesses; and that the jury could, therefore, reasonably know that Frank had been guilty of specific incidents of immorality other than those brought out in the record.

The defendant strenuously objected to this line of argument on the part of Mr. Hooper and urged the Court to state to the jury that the failure to cross-examine any of said witnesses justified no inference on the part of the jury that the cross-examination, if had, would have brought out anything hurtful to the general character of Frank.

This the Court declined to do and permitted the argument; and, in so doing, committed error, for which a new trial should be granted.

70. Because the solicitor-general, in his argument to the jury, stated, as follows: "The conduct of counsel in this case, as I stated, in refusing to cross-examine these twenty young ladies, refutes effectively and absolutely that he had a good character. As I said, if this man had had a good character, no power on earth could have kept him and his counsel from asking where those girls got their information, and why it was they said that this defendant was a man of bad character. Now, that is a common sense proposition; you'd know it whether it was in a book or not. I have already shown you that under the law, they had the right to go into that character, and you saw that on cross-examination they dared not do it. . . . Whenever anybody has evidence in their possession, and they fail to produce it, the strongest presumption arises that it would be hurtful if they had; and their failure to introduce evidence is a circumstance against them. You don't need any law book to make you know that; that is true, because your common sense tells you that whenever a man can bring the evidence, and you know that he has got it and don't do it, the strongest presumption arises against him. And you know, as twelve honest men seeking to get at the truth, that the reason these able counsel did not ask those hair-brained fanatics, as Mr. Arnold called them before they had ever gone on the stand—girls whose appearance is as good as any they brought, girls that you know by their manner on the stand are speaking the truth, girls who were unimpeached and unimpeachable, the reason they didn't ask them. Why? They dared not do it. You know it; if it had never been put in the law books, you would know it."

This address of the solicitor was made in the hearing, and in the presence of the jury, without any protest or comment on the part of the Court.

The defendant made no objection to this argument at the time same was being had, for the reason that similar argument made by Mr. Hooper had been objected to by counsel, and their objection overruled. The objection made to the argument of Mr. Hooper was not here repeated, for the reason that the Court had stated, in the outset of the case, that objection once noted in the record need not in similar instances be repeated, but that the Court would assume that similar objections had been made and overruled.

This argument of the Solicitor was not only illegal, but prejudicial to the defendant, in that he, in substance, urged upon the jury that a cross-examination of female witnesses for the State, who testified to Frank's bad character for lasciviousness, would, upon cross-examination, have testified as to specific acts of immorality against him.

71. Because the Court permitted the solicitor, over the objection of defendant's counsel, to argue before the jury that the wife of the defendant did not speedily visit him when he was first taken under arrest, and that her failure to do so showed a consciousness on her part that her husband was not innocent.

In addressing this question to the jury, the solicitor said: "Do you tell me that there lives a true wife, conscious of her husband's innocence, that would not have gone through snap-shotters, reporters, and everything else to have seen him? Frank said that his wife never went there because she was afraid that the snap-shotters would get her picture, because she didn't want to go through the line of snap-shotters. I tell you, gentlemen of the jury, that there never lived a woman conscious of the rectitude and innocence of her husband who would not have gone through snap-shotters, reporters, and the advice of any rabbi under the sun—and you know it."

Defendant's counsel objected to this line of argument, when the same was being made, upon the ground that the conduct of his wife could in no sense be used as evidence of Frank's guilt, and that the solicitor had no right to argue as he did.

The Court declined to stop the argument, but permitted it to continue. The solicitor impassionately argued it to the jury—that Mrs. Frank's conduct in not visiting her husband was strong evidence of his guilt.

This argument was highly prejudicial to the defendant, and the Court erred in permitting it to be made and in not reprimanding the solicitor-general for the making of such an argument.

72. Because the Court permitted the solicitor-general, in arguing the relative value of the expert testimony delivered by the physicians called for the State and defense, to intimate that the defense, in calling its physicians,

had been influenced by the fact that certain physicians called were the family physicians of some of the jurors. In discussing it, the solicitor said: "It would not surprise me if these able, astute gentlemen, vigilent as they have shown themselves to be, did not go out and get some doctors who have been the family physicians, who are well known to some of the members of this jury, for the effect it might have upon you; and I am going to show that there must have been something besides the training of these men, and I am going to trace them with our doctors. I can't see any other reason in God's world for getting out and getting these practitioners, who have never had any special training on stomach analysis, and who have not had any training on the analysis of tissues—like a pathologist has had, except upon that theory."

Objection was made to this argument of the solicitor, at the time it was being made, upon the ground that there was no evidence to support any such argument; that it was illegal, prejudicial, and highly improper.

73. Because the juror, A. H. Henslee, was not a fair and impartial juror, but was prejudiced against the defendant when he was selected as a juror, had previously thereto formed and expressed a decided opinion as to the guilt of the defendant; and, when selected as a juror, was biased against the prisoner in favor of the State. Affidavits are hereto attached and marked Exhibits A, B, C, D, E, I, BB, CC, DD, EE and JJ, KK, LL, MM, NN, which are hereby made a part of this motion for new trial. Affidavits sustaining the character of the witnesses against said Henslee are hereto attached, marked Exhibits FF, GG, HH, and II.

The conduct of this juror, as shown by the affidavits and other evidence, the condition, conduct, and state of mind of this juror is conclusive that the defendant did not have a fair and impartial jury trial, as provided by the laws and the Constitution of this State; and a new trial should be granted. Upon failure to do so, the Court will commit error.

74. Because the juror, Johenning, was not a fair and impartial juror, in that he had a fixed opinion that the defendant was guilty prior to, and at the time he was taken on the jury and was not a fair and impartial and unbiased juror. Affidavits showing that he was not a fair and impartial juror are hereto attached and marked Exhibits E, F, G, K, and I, and made a part of this motion for new trial.

The opinion, conduct, and state of mind of this juror prior to, and at the time of, his selection as a juror shows that the defendant did not have a fair and impartial trial, as provided by the laws and the Constitution of this State; and, because of the unfairness and impartiality of this juror, a new trial should be granted, and the Court will commit error in not granting it.

75. Because this defendant, as he contends, did not have a fair and impartial jury trial, guaranteed to him under the laws of this State, for the following reasons, to-wit:

Public sentiment seemed to the Court to be greatly against him. The court room was a small room, and during the argument of the case so far as the Court could see about every seat in the court room was taken, in and without the bar, and the aisles at each end of the court room were packed with spectators. The jury, in going from the jury seats to the jury room, during the session of the court, and in going to and from the court room morning, evening and noon, were dependent upon passage-ways made for them by the officers of court. The bar of the court room itself was crowded, leaving only a small space to be occupied by counsel in their argument to the jury. The jury-box, when occupied by the jury, was inclosed by the crowd sitting and standing in such close proximity thereto that the whispers of the crowd could be heard during a part of the trial. When the Court's attention was called to this he ordered the sheriff to move the crowd back, and this was done.

During the argument of the solicitor, Mr. Arnold of counsel for the defense, made an objection to the argument of the solicitor, and the crowd laughed at him, and Mr. Arnold appealed to the Court.

On Saturday, prior to the rendition of the verdict on Monday, the Court was considering whether or not he should go on with the trial during Saturday evening, or to what hour he should extend it in the evening, the excitement in and without the court room was so apparent as to cause apprehension in the mind of the Court as to whether he could safely continue the trial during Saturday afternoon; and, in making up his mind about the wisdom of thus continuing the trial, his Honor conferred with, while on the stand, and in the presence of the jury, the chief of police of Atlanta and the colonel of the Fifth Georgia regiment stationed in Atlanta conferred with his Honor. Not only so, but the public press, apprehending trouble if the case continued on Saturday, united in a request to the Court that he not continue the Court on Saturday evening. The Court, being thus advised, felt it unwise to extend the case on Saturday evening, and continued it until Monday morning. It was evident on Monday morning that the public excitement had not subsided, and that it was as intense as it was on Saturday previous. The same excited crowds were present, and the court house was in the same crowded condition. When the solicitor entered the court room he was met with applause by the large crowd—ladies and gentlemen present by stamping their feet and clapping their hands, while the jury was in their room about twenty feet away.

While Mr. Arnold, of the defense, was making a motion for a mistrial, and while taking testimony to support it before the Court, the crowd applauded when the witness testified that he did not think the jury heard the applause of the crowd on Friday of the trial. The jury was not in the court room, but were in the jury room about 20 feet away.

When the jury was finally charged by the Court, and the case submitted to them, and when Mr. Dorsey left the court room, a large crowd on the outside of the court house, and in the streets, cheered by yelling, and clapping hands, and yelling "Hurrah for Dorsey!"

When it was announced that the jury had agreed upon a verdict, crowds had thronged the court room to such an extent that the Court felt bound to clear the court room before receiving the verdict. This the Court did. But, when the verdict of the jury was rendered, a large crowd had thronged the outside of the court house; someone signaled to the outside what the verdict was, and the crowd on the outside raised a mighty shout of approval. So great was the shouting and applause on the outside that the Court had some difficulty in hearing the response of the jurors as he called them.

The defendant was not in the court room when the verdict was rendered, his presence having been waived by his counsel. This waiver was accepted and acquiesced in by the Court, because of the fear of violence that might be done the defendant were he in court when the verdict was rendered.

When Mr. Dorsey left the court room, he was met at the court house door by a multitude, was hurrahed, cheered, taken upon the shoulders of a part of the crowd and carried partly to the building opposite, wherein he had his office.

This defendant contends that the above recital shows that he did not have a fair and impartial jury trial; that a new trial ought to be granted; and that the Court, failing to grant such new trial, will commit error.

In support of this ground of the motion movant refers to the affidavits hereto attached marked Exhibits J to AA, inclusive, and hereby made a part of this motion for new trial.

76. Because the Court erred in not leaving it to the jury to say whether or not, under the facts, the witness Conley was an accomplice.

The State insisted that Conley was watching for Frank to enable him to have connection with some girl, naturally or unnaturally; and Frank seeking to get her consent and failing killed her to insure her silence, and then employed Conley who had previously been watching for him to enable him to conceal her body.

If Conley was aiding and abetting Frank in his transactions with Mary Phagan, and if, as a natural and probable result of such transaction, Mary Phagan met her death, then Conley would be an accomplice of Frank, although he had no personal part in her killing.

The Court, under proper instructions, ought to have left it to the jury to say whether Conley was or not an accomplice of Frank; and, in failing to do, and because he failed to do so the Court committed error.

77. The Court erred in not charging the jury that if, under instructions given them, they found that Conley was an accomplice of Frank, they could

not convict Frank under the testimony of Conley alone; but that, to do so, there must be a witness other than Conley or circumstances corroborating the evidence of Conley.

78. Because the Court permitted the witness, Irene Jackson, at the instance of the solicitor-general, and over the objection of the defendant, made at the time the testimony was offered, that the same was irrelevant, immaterial, illegal, and prejudicial to the defendant, to testify substantially as follows:

"I remember having a conversation with Mr. Starnes about a dressing room incident. I told him that Mr. Frank came to the door of the dressing room while Emily Mayfield was dressing. He looked and turned around and walked out—just pushed the door open and looked in. I don't know whether he smiled or not. I never noticed to see whether he smiled or not; he just kind of looked at us and turned and walked out. I didn't time him as to how long he stayed; he just came and looked and turned and walked out. At the time, Miss Emily Mayfield had off her top dress and was holding her old dress in her hand to put it on. I did not report that to the forelady, but Miss Ermilie did. I have heard remarks other than those of Miss Mayfield about Frank going into the dressing room, but I don't remember who said them. I just remember I heard something about it, two or three different times, but I don't remember anything about it, just a few times. I heard the girls talking about Mr. Frank going into the dressing room on two or three different occasions. It was the middle of the week after we started to work there; I don't remember the time. Mr. Frank also entered the dressing room when my sister was in there lying down; she just had her feet up on the table; she had them on a stool, I believe. She was dressed. I don't remember how her dress was; I didn't look. I paid no attention to him, only he just walked in and turned and walked out; looked at the girls that were sitting in the window and walked out. There was something said about this, but I don't remember. I have heard something about him going in the room and staring at them, but I don't remember exactly. Mr. Frank walked in the dressing room on Miss Mamie Kitchens. She and I were in there. I have heard this spoken of, but I don't remember. I have heard them speak of other times, when I wasn't there. Mr. Frank said nothing either time when I was there. The door was pushed to, but there was no way to fasten the door. He pushed the door open and stood in the door. The dressing room had a mirror in it. It was all one room, except there were a few lockers for the foreladies, and there was a place where the girls changed their street dresses and got into their working dresses, and vice versa. There was no way for Mr. Frank to tell before he opened the door what the condition of the girls was in there. I do not know whether he knew they were in there or not. That was the usual time for the girls to go in the dressing room, undress and get ready to go to work, changing their street clothes and putting on their working clothes. We had all registered on before we went up there in the dressing room. Mr. Frank knew the girls had stopped there to register. The day he looked in the dressing room at Miss Mayfield, he smiled, or made some kind of a face that looked like a smile—smiling at Miss Mayfield, he didn't speak or didn't say a word."

This evidence was objected to for the reasons above stated, and for the further reason that statements tending to show the conduct of Mr. Frank with girls, in going into the dressing room with girls, was intended to create

prejudice in the minds of the jurors against the defendant; and, not to illustrate the question of whether he was or was not the murderer of Mary Phagan. The Court overruled these objections and let the testimony go to the jury; and in doing so, movant contends, erred for the reasons above stated.

79. Because the Court permitted the witness, Harlee Branch, at the instance of the solicitor-general, to testify to incidents at the pencil factory, wherein Conley, after having made the third affidavit, purported to re-enact the occurrence of the murder between himself and Frank, wherein the body of Mary Phagan was taken from the office floor to the cellar of the factory, the testimony permitted by the Court being substantially as follows:

"I will have to give you the time of Conley's arrival at the factory, approximately. I was up there at twelve o'clock, and I was a few minutes late. Conley had not arrived there then. We waited until they brought him there, which was probably ten or fifteen minutes later. The officers brought Conley into the main entrance of the factory here and to the stair-case—I don't know where the stair-case is here—yes, here it is (indicating on diagram) and they carried him up here and told him what he was there for, and questioned him, and made him understand that he was to re-enact the pantomine. After a few minutes conversation, and a very brief conversation, Conley led the officers back here and turned off to his left to a place back here; I guess this is it (indicating on diagram), right where this is near some toilets, and he was telling his story as he went through there, and he said when he got up there, he went back and found this body in that place. He was talking constantly—all the time; I don't know how he made out a part of his story. Well, when he got back— After reaching this point at the rear left side of the factory, describing the position of the body, as he stated it, he stated the head was lying towards the north and the feet towards the south, as indicated, and there was a cord around the neck. He didn't state how long it took for the various movements. I didn't time it; I know the time I arrived there and the time I left the factory. Conley said when he found the body he came up to Mr. Frank—called to him some point along here I should judge (indicating on the diagram). I don't understand this diagram exactly. And he told him the girl was dead, and I don't know just exactly what Frank said. I will try to eliminate as much of that conversation as I can. Anyhow, he said he came on up to where Mr. Frank was, and that he was instructed to go to the cotton room, which he showed us; I don't know, it must be on the same side of the building about here, I judge (indicating) and he went in there. He showed us the cotton room, and he said he went back, and he did go back, led us back, and told about taking up the body, how he brought it up on his shoulder, and then, in front of a little kind of impression on the wall, he said he dropped it, and he indicated the place, and then he come up and told Mr. Frank about it—that he would have to come and help him or something like that—and that Mr. Frank came back and took the feet, I believe he said, and he took the head, and they brought the body up to the elevator and put it on the elevator. He was enacting this all the time and talking all the time. He described how the body was put on the elevator, and he said Mr. Frank run the elevator down, and he went down on the elevator. On this trip he went down in the elevator to the basement, and he said Mr. Frank helped to take the body out, and they dropped it there, and Mr. Frank told him to take it up and

carry it back, and he put the body on his shoulder and carried it back to this sawdust which is away back here, and that he came on back, and he said there was some things in here which he threw on this trash pile, and Mr. Frank, he said, was up in the cubby hole, he said—somewhere back there—and later he led us up there—and that Mr. Frank told him to run the elevator up; so Conley and the officers and the rest of us who were with him came up in the elevator; and when they got to the first floor, just before getting to the first floor, he said this was where Mr. Frank got on the elevator. Mr. Frank was waiting there for him. Then they brought the elevator on up to the second floor, and he had them to stop the elevator, just, I suppose, a foot or a little more below the landing; and he said Mr. Frank jumped off when the elevator was about that point, and after getting up, he said Mr. Frank went around the elevator to a sink that he showed us back of the elevator, to wash his hands; and he waited out in front and he said he shut off the power while Mr. Frank was gone around there; and when Mr. Frank came back, they went in the office, and he led us on in the office through—there is an outer office there, and he came in this way and come through in this office back here, this inner office, and he indicated Mr. Frank's desk and a desk right behind it;—I presume this is the two desks (indicating); that Mr. Frank sat down in the chair at that desk, and he told him to sit at the other desk, and Mr. Frank told him to write some notes; and he was asked by some of the officers to write what Mr. Frank told him to write, and he sat down there and wrote one note, and I believe —I know the note he wrote, and I don't know whether he wrote one or two, and that Mr. Frank handed him some money and that later he took it back, and I don't remember whether he gave him the cigarettes and money before or after this, I don't recall. Anyway, when he was in here, after he had written the notes for the officers, I found it was time for me to get in the office with my copy. He hadn't finished; he was still sitting there; and I telephoned in to the office for relief—someone to relieve me—and I went to the office and I left him there in the office, and I went in. I judge it was about a quarter past twelve when Conley got there. I must have gotten there five minutes before that time. I left about one o'clock. They rushed Conley right up the steps and, probably two or three minutes after he got up there, he began this enactment, and he went very rapidly—we sort of trotted to keep behind him. Questions were constantly asked him by four or five of the officers. I have cut out a good deal of Conley's talking; just how much, I have no way of indicating. He was talking constantly, except when interrupted by questions. I didn't time it when I got there. When I got to the office from the police station it was ten minutes after twelve and I walked down just about a block and a half. Conley got there, I should say, about five minutes after I did. I left a little after one, probably five or ten minutes. It would be a difficult thing for me to estimate how much time it took Conley to enact what he did, leaving out the conversation he had with different men. While he was acting, he was acting very rapidly; he kept us on the trot. There is no way for me to give you my opinion as to how long it took Conley to go through that demonstration; there was no way to disassociate the time and find out the difference between the two—between the time he was acting and talking. I didn't attempt to do that."

The defendant objected to this testimony, because:

(a) This so-called experiment made with Conley was solely an endeavor on their part to justify his story.

(b) The sayings and actings of Conley, as aforesaid, not under oath, had and made without cross-examination, and reported by the witness to the Court, the net result of which is a repetition of Conley's statement, without the sanction of an oath.

(c) That Conley went to the factory immediately after making his last affidavit; that that last affidavit is not the way he tells the story on the stand; that he tells it wholly differently on the stand; at least differently in many particulars; that it can not help the jury for Conley to go to illustrate that affidavit when he says now on the stand that much of it was a lie, and that it did not happen that way at all; that this evidence was of another transaction, not binding upon this defendant.

The Court overruled the objection and admitted the testimony to the jury; and, in doing so, committed error, for the reasons above stated.

80. Because the Court, over objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss Maggie Griffin, to make the following answers:

Q. Are you acquainted with the general character of Leo M. Frank for lasciviousness; that is his relations with women?

A. Yes, sir.

The Court admitted the above question and answer, over the objection of the defendant as above stated, and thereby erred, for the reasons stated.

81. Because the Court, over objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss Myrtie Cato, to make the following answers:

Q. Miss Cato, I want to ask you one other question, also. Are you acquainted with the general character of Leo M. Frank for lasciviousness; that is, his relations towards women?

A. Yes, sir.

Q. Is it good or bad?

A. Bad.

The Court admitted the above questions and answers, over objection of the defendant as above stated, and thereby erred, for the reasons stated.

82. Because the Court, over objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Mrs. H. R. Johnson, to make the following answers:

Q. Now, are you acquainted with his (Frank's) general character for lasciviousness; that is, his general character towards women generally?

A. No, sir, not very much.

Q. Not very much? Well, answer the question: yes or no; are you acquainted?

A. All right, she said, not very much.

The Court admitted the above questions and answers, over the objection of defendant as above stated, and thereby erred, for the reasons stated.

83. Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss Marie Carst, to make the following answers:

Q. Bad; now, Miss Carst, I will ask you if you are acquainted with his (Frank's) general character for lasciviousness; that is, his attitude towards girls and women?

A. Yes, sir.

Q. Is that character good or bad?

A. Bad.

The Court admitted the above questions and answers, over the objection of the defendant as above stated, and thereby erred, for the reasons stated.

84. Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss Nellie Pettis, to make the following answers:

Q. Are you acquainted with his (Frank's) general character for lasciviousness; that is, with women prior to that time?

A. Yes, sir.

Q. Is it good or bad?

A. Bad.

The Court admitted the above questions and answers, over objection of the defendant as above stated, and thereby erred, for the reasons stated.

85. Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss May Davis, to make the following answers:

Q. I want to ask you another question. Are you acquainted with the general character of Leo M Frank, prior to April 26, 1913, as to lasciviousness; that is, his relations with girls and women?

A. Yes.

Q. Is that good or bad?

A. Bad.

The Court admitted the above questions and answers, over objection of the defendant as above stated, and thereby erred, for the reasons stated.

86. Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent,

illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Mrs. Mary E. Wallace, to make the following answers:

Q. I will ask you now if you are acquainted with his general character for lasciviousness; that is, as to his (Frank's) attitude towards girls and women?

A. Yes, sir.

Q. Is that good or bad?

A. Bad.

The Court admitted the above questions and answers, over the objection of the defendant as above stated, and thereby erred, for the reasons stated.

87. Because the Court, over the objection of the defendant, made at the time the evidence was offered, that the same was immaterial, incompetent, illegal and prejudicial to the defendant, permitted the solicitor-general to ask the following questions, and the witness, Miss Estelle Winkle, to make the following answers:

Q. Are you acquainted with his (Frank's) general character for lasciviousness; that is, his relations with girls and women?

A. Yes, sir.

Q. Is that good or bad?

A. Bad.

The Court admitted the above questions and answers, over objection of defendant, made at the time the evidence was offered, and thereby erred, for the reasons stated.

88. Because the Court erred, over the objection of the defendant that the same was irrelevant and immaterial and prejudicial to defendant, in permitting the witness, Louis Ingram, to testify as follows:

"I am a conductor for the Georgia Railway & Power Co. I come to town ahead of them cars coming in on English Avenue going to Cooper Street, known as the English Avenue car. I have seen them come in and been on it when it come in, the English Avenue car due at the junction of Marietta and Broad Streets according to schedule at 12:07. I have seen the car due at Marietta and Broad streets according to schedule at 12:07, the English Avenue car, several times come in ahead of the car I was coming in on, as much ahead as four minutes. I saw a car that came in this morning that was due in town at 8:30 and it got in at 8:24. I know the Motorman Matthews. I have seen his car ahead of time. I could not say how often."

The Court permitted this testimony over the objection before stated, and in doing so erred for the reasons stated. This was prejudicial to the defendant because it tended to show that at times other than on the day of the murder, the English Avenue car, which on that day was run by the witness, Motorman Matthews, had reached Marietta and Broad Streets four minutes ahead of time. It became material to determine what time this English Avenue car reached Broad Street on the day of the murder. The Motorman Matthews and the conductor, swore that on that day the English

Avenue car reached Broad Street at 12:07. The Court permitted this and other like testimony to be introduced as tending to discredit their statements that the car was on schedule time that day. In doing this the Court erred, for the fact that the English Avenue car was ahead of time as much as four minutes on other days did not indicate that it was ahead of time on the day of the murder.

89. Because the Court erred, over the objection of the defendant that the same was irrelevant and immaterial and prejudicial to defendant, in permitting the witness, W. D. Owens, to testify as follows:

"I run on what is known as Route Eight, White City to Howell Station, for the Georgia Railway & Power Co. We were due in town at 12:05. My schedule is ahead of the Cooper Street and English Avenue schedule two minutes. I have known the English Avenue and Cooper Street car to get to the junction of Marietta and Broad Streets ahead of my car. The English Avenue car is due there at 12:07; my schedule at 12:05. I have known the English Avenue car to get there as much as two minutes ahead of us. That would make the English Avenue car four minutes ahead of time. I have known this to occur after April 26th. I don't know whether it occurred prior to that time."

The Court permitted this testimony ~~over~~ the objection before stated, and in doing so erred for the reasons stated. This was prejudicial to the defendant because it tended to show that at times other than on the day of the murder, the English Avenue car, which on that day was run by the witness, Motorman Matthews, had reached Marietta and Broad Streets four minutes ahead of time. It became material to determine what time this English Avenue car reached Broad Street on the day of the murder. The Motorman Matthews and the conductor, swore that on that day the English Avenue car reached Broad Street at 12:07. The Court permitted this and other like testimony to be introduced as tending to discredit their statements ~~that the car~~ was on schedule time that day. In doing this the Court erred, for the fact that the English Avenue car was ahead of time as much as four minutes on other days did not indicate that it was ahead of time on the day of the murder.

90. Because of the following colloquy which occurred during the trial and while the witness, John Ashley Jones, was on the stand, during the cross-examination of Jones by the solicitor:

Q. You never heard anybody down there say anything about Mr. Frank's practices and relations with the girls.

A. Not in the Pencil Factory.

Q. Not at all? You never did talk to any of these young girls, did you?

A. No, I don't happen to know any of them.

Q. Or any of the men?

A. No.

Q. You don't know what kind of practices Mr. Frank may have carried on down there in the Pencil Factory?

A. No.

Q. You don't know, you never heard anybody say that Mr. Frank would take girls in his lap in his office here?

A. No.

(Here objection was made by Mr. Arnold.)

The Court: On cross examination he can ask him if he has heard of certain things.

Mr. Arnold: Up to April 26th?

The Court: Yes, sir.

Mr. Dorsey: I am not four-flushing or any such thing; I am going to bring the witnesses here.

Q. You never heard of Frank going out there to Druid Hills and being caught did you, before April 26th?

A. No, but our reporter, it was his business to find out, and if he had found it out, he certainly would not have issued such a policy.

Q. Now, about twelve months ago, you never heard of Frank kissing girls and playing with their nipples on their breast around there?

A. No, I never heard such a thing.

Q. You never heard of that at all?

A. I never heard that. I had been in Mr. Frank's—

Q. You never talked to Tom Blackstock, then, did you?

A. I haven't the pleasure of Mr. Blackstock's acquaintance.

Q. Did you ever know Mrs. L. D. Coursey?

A. I can't say that I ever heard of her.

Q. Miss Myrtie Cato, you never heard of her, and that he would go into the—

A. Mr. Dorsey, I have been down there.

By the Court: He wants to know if you ever heard of that before.

Q. He made no apology and no explanation, but just walked right on in there when they were lying on the couch?

A. I never heard that.

Q. Did you ever hear of his putting his arms around Myrtie Cato in the office?

A. No, sir.

Q. Did you ever hear about the time he went in on little Gertie Jackson that was sick, lying in the dressing room with her dress up, and stood up there and looked at her, and hear any talk of the girls there about his attitude?

A. No, sir.

Q. Did you ever hear about his frequently going into the dressing room with Vernie McDaniel?

A. No, sir.

Q. Did you ever hear of the time it was said that Miss Pearl Darlson —about five years ago, when he held out the money in one hand and put his hand on the girl, that she threw the monkey wrench at him? You never heard of that time?

A. No, sir.

Q. Did you ever talk to Mrs. Martin Donegan?

A. No, sir, not that I know of.

Q. Did you ever hear them say that he paid special attention to the girls, and winked and smiled at them, and had nude pictures hung up in his office, and walked around and slapped the girls on the seat?

A. No, sir.

Q. Miss Wingate, 34 Mills Street, did you ever talk to her about Frank?

A. No, sir, I don't know her.

Q. Did you ever hear C. D. Donegan talk about Frank?
A. No, sir.
Q. You never heard any of these factory people talk about him?
A. No, sir.

The Court erred in permitting the solicitor, although the witness denied hearing all of the remarks referred to, to say in the presence of the jury that he was not four-flushing, but that he was going to bring the witnesses there, thereby improperly saying to the jury that he had such witnesses and meant to bring them in.

The Court erred in not withdrawing this whole subject from the jury and in not rebuking the solicitor-general for injecting the questions in the case and asserting that he had witnesses to prove the things asked about.

These suggestions and intimations of the solicitor-general were exceedingly prejudicial to the defendant, and for making them he ought to have been severely rebuked by the Court, and failure of the Court to do so was cause for a new trial.

91. Because the Court erred in charging the jury as follows:

"Is Leo M. Frank guilty? Are you satisfied on that beyond a reasonable doubt from the evidence in this case? Or is his plea of not guilty the truth?"

The Court erred in putting the proposition of the defendant's guilt or innocence to the jury in this manner, because the effect of the same was to put the burden upon the defendant of establishing his plea of not guilty, and the further effect was to impress upon the jury that unless they believed that the defendant's plea of not guilty was the truth that they could not acquit. The tendency of this charge was to impress upon the jury that they were to consider only upon the one side as to whether they believed Leo M. Frank guilty or upon the other side they were to consider only the question of whether they believed his plea of not guilty, and there was no middle ground in the case. And movant says that the error in this charge is that it leaves entirely out of view the consideration of the third proposition which the jury had the right to consider, and that is as to whether, even though they did not believe his plea of not guilty the truth, still if they had a reasonable doubt in their minds of his guilt they should acquit him.

92. Movant further says that a new trial should be granted because of the following:

Mr. Dorsey, the solicitor-general, in the concluding argument, made the following statement:

"Now, gentlemen (addressing the jury) Mr. Arnold spoke to you about the Durant case. That case is a celebrated case. It was said that that case was the greatest crime of the century. I don't know where Mr. Arnold got his authority for the statement that he made with reference to that case. I would you like to know it."

Whereupon the following colloquy occurred:

Mr. Arnold: I got it out of the public prints, at the time, Mr. Dorsey, published all over the country, I read it in the newspapers, that's where I got it.

Mr. Dorsey (resuming): On April 15, 1913, Mr. C. M. Pickett, the district attorney of the City of San Francisco, wrote a letter—

Mr. Arnold: I want to object to any communication between Mr. Pickett and Mr. Dorsey—it's just a personal letter from this man, and I could write to some other person there and get information satisfactory to me, no doubt, just as Mr. Dorsey has done, and I object to his reading any letters or communications from anybody out there.

Mr. Dorsey: This is a matter of public notoriety. Here's his reply to a telegram I sent him, and in view of his statement, I have got a right to read it to the jury.

Mr. Arnold: You can argue a matter of public notoriety, you can argue a matter that appears in the public prints—my friend can, but as to his writing particular letters to particular men, why that's introducing evidence, and I must object to it; he has got a right to state simply his recollection of the occurrence, or his general information on the subject, but he can't read any letters or telegrams from any particular people on the subject.

Mr. Dorsey: Mr. Arnold brought this in, and I telegraphed to San Francisco, and I want to read this telegram to the jury; can't I do it?

Mr. Arnold: If the Court please I want to object to any particular letter or telegram,—I can telegraph and get my information as well as he can, I don't know whether the information is true, I don't know who he telegraphed about it; I have got a right to argue a matter that appears in the public prints, and that's all I argued,—what appears in the papers,—it may be right or wrong, but if my friend has a friend he knows there, and writes and gets some information, that's introducing evidence, and I want to put him on notice that I object to it. I have got the same right to telegraph there and get my own information. And besides, my friend seems to know about that case pretty well, he's writing four months ago. Why did he do it?

Mr. Dorsey (resuming): Because I anticipated some such claim would be made in this presence.

Mr. Arnold: You anticipated it, then, I presume, because you knew it was published; that's what I went on.

Mr. Dorsey (resuming): I anticipated it, and I know the truth about that case.

Mr. Arnold: I object to his reading any communication unless I have the right to investigate it also; I am going only on what I read in the public press. April 15th is nearly two weeks before the crime is alleged to have been committed. I want to record an objection right now to my friend doing any such thing as that, reading a telegram from anybody picked out by my friend Dorsey, to give him the kind of information he wants for his speech, and I claim the right to communicate out there myself and get such information as I can, if he's given the right to do it.

The Court: I'll either have to expunge from the jury what you told the jury, in your argument, or—

Mr. Arnold: I don't want it expunged. I stand on it.

The Court: I have either got to do one of the two—

Mr. Dorsey: No, sir, can't I state to this jury what I know about it, as well as he can state what he knows?

Mr. Arnold: Certainly he can, as a matter of public notoriety, but not as a matter of individual information or opinion.

The Court: You can state, Mr. Dorsey, to the jury, your information about the Durant case, just like he did, but you can't read anything—don't introduce any evidence.

Mr. Dorsey (resuming): My information is that nobody has ever confessed the murder of Blanche Lamont and Minnie Williams. But, gentlemen of the jury, as I'll show you by reading this book, it was proved at the trial, and there can be no question upon the fact, Theodore Durant was guilty, the body of one of these girls having been found in the belfry of the church in question, and the other in the basement. Here's the book containing an account of that case, reported in the 48 Pacific Reporter, and this showed, gentlemen of the jury, that the body of that girl, stripped stark naked, was found in the belfry of Emanuel church, in San Francisco, after she had been missing for two weeks. It shows that Durant was a medical student of high standing, and a prominent member of the church, with superb character, a better character than is shown by this man, Leo M. Frank, because not a soul came in to say that he didn't enjoy the confidence and respect of every member of that large congregation, and all the medical students with whom he associated. Another thing, this book shows that the crime was committed in 1895, and this man Durant never mounted the gallows until 1898, and the facts are that his mother took the remains of her son and cremated them, because she didn't want them to fall into the hands of the medical students, as they would have done in the State of California, had she not made the demand and received the body. Hence, that's all poppy-cock he was telling you about. There never was a guiltier man, there never was a man of higher character, there never was a more courageous jury or better satisfied community, than Theodore Durant, the jury that tried him, and the people of San Francisco, where he lived and committed his crime and died.

Movant says that a new trial should be granted, because of the fact that the Court did not squarely and unequivocally rule that the jury should not consider the statement Mr. Dorsey made as to the letter C. M. Pickett, the district attorney, had written, and that a new trial should be granted because the argument was illegal, unwarranted, not sustained by the evidence, and tended to inflame and unduly prejudice the jury's mind. Neither the letter from Pickett, nor the telegram was read further than is shown in the foregoing statement.

93. The movant says that a new trial should be granted because of the following ground:

The solicitor-general having, in his concluding argument, made the various statements of fact about the Durant case, as shown in the preceding ground of this motion, the judge erred in failing to charge the jury as follows, to-wit:

"The jury are instructed that the facts in other cases read or stated in your hearing are to have no influence upon you in making your verdict. You are to try this case upon its own facts and upon the opinion you entertain of the evidence here introduced."

94. Movant says that a new trial should be granted because of the following ground:

The solicitor-general having, in his concluding argument, made the various statements of fact about the Durant case, as shown in the preceding ground of this motion, the judge erred in failing to charge the jury as follows, to-wit:

"The jury are instructed that the facts in other cases read or stated in your hearing are to have no influence upon you in making your verdict. You are to try this case upon its own facts and upon the opinion you entertain of the evidence here introduced."

95. Because the Court should have given in charge the instruction set forth in the preceding ground, because of the following argument made by the solicitor-general, in his concluding argument to the jury, said argument being a discussion of the facts of other cases, and requiring such charge as was requested, the remarks of the solicitor-general, in conclusion, being as follows:

"Oscar Wilde, an Irish knight, a literary man, brilliant, the author of works that will go down the ages—Lady Windemere's Fan, De Profundis, which he wrote while confined in jail; a man who had the effrontery and the boldness, when the Marquis of Queensbury saw that there was something wrong between this intellectual giant and his son, sought to break up their companionship; he sued the Marquis for damages, which brought retaliation on the part of the Marquis for criminal practices on the part of Wilde, this intellectual giant; and wherever the English language is read, the effrontery, the boldness, the coolness of this man, Oscar Wilde, as he stood the cross-examination of the ablest lawyers of England—an effrontery that is characteristic of the man of his type,—that examination will remain the subject matter of study for lawyers and for people who are interested in the type of pervert like this man. Not even Oscar Wilde's wife—for he was a married man and had two children,—suspected that he was guilty of such immoral practices, and, as I say, it never would have been brought to light probably, because committed in secret, had not this man had the effrontery and the boldness and the impudence himself to start the proceeding which culminated in sending him to prison for three long years. He's the man who led the aesthetic movement; he was a scholar, a literary man, cool, calm, and cultured, and as I say, his cross-examination is a thing to be read with admiration by all lawyers, but he was convicted, and in his old age, went tottering to his grave, a confessed pervert. Good character? Why, he came to America, after having launched what is known as the 'aesthetic movement' in England, and throughout this country lectured to large audiences, and it is he who raised the sunflower from a weed to the dignity of a flower. Handsome, not lacking in physical or moral courage, and yet a pervert, but a man of previous good character. Abe Ruef, of San Francisco, a man of his race and religion, was the boss of the town, respected and honored, but he corrupted Schmitt, and he corrupted everything that he put his hands on, and just as a life of immorality, a life of sin, a life in which he fooled the good people when debauching the poor girls with whom he came in contact, has brought this man before this jury, so did eventually Abe Ruef's career terminate in the penitentiary. I have already referred to Durant. Good character isn't worth a cent when you have got the case before you. And crime don't go only with the ignorant and the poor. The ignorant, like Jim Conley, as an illustration, commit the small crime, and he doesn't know anything about some of this higher type of crimes but a man of high intellect and

wonderful endowments which, if directed in the right line, bring honor and glory; if those same faculties and talents are perverted and not controlled, as was the case with this man, they will carry him down. Look at McCue, the mayor of Charlottesville; a man of such reputation that the people elevated him to the head of that municipality, but notwithstanding that good reputation, he didn't have rock-bed character, and becoming tired of his wife, he shot her in the bath-tub, and the jury of gallant and noble and courageous Virginia gentlemen, notwithstanding his good character, sent him to a felon's grave. Richeson, of Boston, was a preacher, who enjoyed the confidence of his flock. He was engaged to one of the wealthiest and most fascinating women in Boston, but an entanglement with a poor little girl, of whom he wished to rid himself, caused this man, Richeson to so far forget his character and reputation and his career as to put her to death. And all these are cases of circumstantial evidence. And after conviction, after he had fought, he at last admitted it, in the hope that the governor would at last save his life, but he didn't do it, and the Massachusetts jury and the Massachusetts governor were courageous enough to let that man who had taken that poor girl's life to save his reputation as the pastor of his flock, go, and it is an illustration that will encourage and stimulate every right-thinking man to do his duty. Then, there's Beattie. Henry Clay Beattie, of Richmond, of splendid family, a wealthy family, proved good character, though he didn't possess it, took his wife, the mother of a twelve-months'-old baby, out automobiling, and shot her; yet that man, looking at the blood in the automobile, joked, joked, joked! He was cool and calm, but he joked too much; and although the detectives were abused and maligned, and slush funds to save him from the gallows were used in his defense, a courageous jury, an honest jury, a Virginia jury, measured up to the requirements of the hour and sent him to his death, thus putting old Virginia and her citizenship on a high plane. And he never did confess, but left a note to be read after he was dead, saying that he was guilty. Crippen, of England, a doctor, a man of high standing, recognized ability and good reputation, killed his wife because of infatuation for another woman, and put her remains away where he thought as this man thought, that it would never be discovered; but murder will out, and he was discovered, and he was tried, and be it said to the glory of old England; he was executed."

96. Movant further says that a new trial should be granted because of the following ground:

The solicitor-general, in his concluding argument, spoke to the jury as follows:

"But to crown it all, in this table which is now turned to the wall, you have Lemmie Quinn arriving, not on the minute, but to serve your purposes, from 12:20 to 12:22 (referring to a table which the defendant's counsel had exhibited to the jury giving, as was claimed by counsel, in chronological order, the happening of events as to defendant on April 26) but that, gentlemen, conflicts with the evidence of Freeman and the other young lady, who placed Quinn by their evidence, in the factory before this time."

Whereupon the following occurred:

Mr. Arnold: There isn't a word of evidence to that effect; those ladies were there at 11:35 and left at 11:45, Corinthia Hall and Miss Freeman, they left there at 11:45, and it was after they had eaten lunch and about to pay their fare before they ever saw Quinn, at the little cafe, the Busy Bee. He says that they saw Quinn over at the factory before 12, as I understood it."

Mr. Dorsey: Yes, sir, by his evidence.

Mr. Arnold: That's absolutely incorrect, they never saw Quinn there then, and never swore they did.

Mr. Dorsey (resuming): No, they didn't see him there; I doubt if anybody else saw him there, either.

Mr. Arnold: If a crowd of people here laughs every time we say anything how are we to hear the Court? He has made a whole lot of little misstatements, but I let those pass, but I am going to interrupt him on every substantial one he makes. He says those ladies saw Quinn,—says they say Quinn was there before 12, and I say he wasn't there, and they didn't say that he was there then.

The Court: What is it you say, Mr. Dorsey?

Mr. Dorsey: I was arguing to the jury the evidence.

The Court: Did you make a statement to that effect?

Mr. Dorsey: I made a statement that those two young ladies say they met Holloway as he left the factory at 11:05—I make the statement that as soon as they got back down to that Greek cafe, Quinn came in and said to them, "I have just been in and seen Mr. Frank."

Mr. Arnold: They never said that, they said they met Holloway at 11:45, they said at the Busy Bee Cafe, but they met Quinn at 12:30.

Mr. Dorsey: Well, get your record,—you can get a record on almost any phase, this busy Quinn was blowing hot and blowing cold, no man in God's world knows what he did say, but I got his affidavit there.

Mr. Arnold: I have found that evidence, now, Mr. Dorsey, about the time those ladies saw Quinn.

Mr. Dorsey: I'll admit he swore both ways.

Mr. Arnold: No, he didn't either. I read from the evidence of Miss Corinthia Hall: Then Mr. Dorsey asked her: "Then you say you saw Lemmie Quinn right at the Greek cafe at five minutes to twelve, something like that?" A. "No, sir, I don't remember what time it was when I saw him, we went into the cafe, ordered sandwiches and a cup of coffee, drank the coffee and when we were waiting on the change he came in." And further on, "All he said (Quinn) was he had been up and had seen Mr. Frank, that was all he said?" A. "Yes, sir," and so on. Now the evidence of Quinn: "What sort of clock was that?"—he's telling the time he was at DeFoor's pool parlor—"What sort of clock was that? A. Western Union clock. Q. What did the clock say when you looked at it? A. 12:30." And he also swore that he got back to the pencil factory at 12:20, that's in a half dozen different places.

The Court: Anything contrary to that record, Mr. Dorsey?

Mr. Dorsey: Yes, sir, I'm going to show it by their own table that didn't occur—that don't scare anybody and don't change the facts.

The Court erred, under the foregoing facts, in not restraining the solicitor-general from making the erroneous statements of fact objected to by defendant's counsel, which the evidence did not authorize, and in permitting him to proceed, and in not rebuking the solicitor-general, and in not stating to the jury that there was no such evidence as the solicitor-general had stated, in the case, and defendant says that for this improper argument, and for this failure of the Court, there should be granted a new trial.

97. Movant further says that a new trial should be granted because of the following:

In his concluding argument Solicitor-general Dorsey, referring to the defendant's wife, and referring to the claim made by the solicitor-general that

the defendant's wife had not visited him for a certain time after he was first imprisoned, told the jury:

"Do you tell me that there lives a true wife, conscious of her husband's innocence, that wouldn't have gone through snap-shotters, reporters and everything else, to have seen him."

Whereupon the following colloquy ensued:

Mr. Arnold: I must object to as unfair and outrageous an argument as that, that his wife didn't go there through any consciousness of guilt on his part. I have sat here and heard the unfairest argument I have ever heard, and I can't object to it, but I do object to his making any allusion to the failure of the wife to go and see him; it's unfair, it isn't the way to treat a man on trial for his life.

The Court: Is there any evidence to that effect?

Mr. Dorsey: Here is the statement I have read.

Mr. Arnold: I object to his drawing any conclusions from his wife going or not going, one way or the other—it's an outrage upon law and decency and fairness.

The Court: Whatever was in the evidence or the statement I must allow it.

Mr. Dorsey (resuming): Let the galled jade wince—

Mr. Arnold: I object to that, I'm not a "galled jade," and I've got a right to object. I'm not galled at all, and that statement is entirely uncalled for.

The Court: He has got the right to interrupt you.

Mr. Dorsey: You've had your speech.

Mr. Rosser: And we never had any such dirty speech as that either.

Mr. Dorsey: I object to his remark, your Honor, I have a right to argue this case.

Mr. Rosser: I said that remark he made about Mr. Arnold, and your Honor said it was correct; I'm not criticising his speech, I don't care about that.

Mr. Dorsey (resuming): Frank said that his wife never went back there because she was afraid that the snap-shotters would get her picture,—because she didn't want to go through the line of snap-shotters. I tell you, gentlemen of the jury, that there never lived a woman, conscious of the rectitude and innocence of her husband, who wouldn't have gone to him through snap-shotters, reporters and advice of any Rabbi under the sun. And you know it.

Movant says that the Court erred in not taking positive action, under the circumstances aforesaid, and in not restraining the Solicitor-General from making his unfounded and unjust inferences from the alleged failure of the defendant's wife to visit him, which was not authorized by the evidence in the case, and erred in allowing the Solicitor-General to argue upon this subject at all, and erred in not admonishing the jury that such argument could not be considered and should have no weight with the jury, and the Court erred in not rebuking the Solicitor-General for making the reply which he made to the interruption, to the effect "Let the galled jade wince," and erred in not rebuking the Solicitor-General for such unjust comments upon a merited interruption,—and because of such failures of the Court, and because of the aforesaid erroneous, unjust and unfounded arguments of the Solicitor-General, movant says that a new trial should be granted.

98. Movant says that a new trial should be granted because of the following:

The Solicitor-General, in his concluding argument to the jury, spoke as follows:

If there be a negro who accuses me of a crime of which I am innocent, I tell you, and you know it's true, I'm going to confront him, even before any attorney, no matter who he is, returns from Tallulah Falls, and if not then, I will tell you just as soon as that attorney does return, I'm going to see that that negro is brought into my presence, and permitted to set forth his accusations. You make much here of the fact that you didn't know what this man Conley was going to say when he got on the stand. You could have known it, but you dared not do it.

Whereupon the following colloquy ensued:

Mr. Rosser: May it please the Court, that's an untrue statement; at that time when he proposed to go through that dirty farce, with a dirty negro, with a crowd of policemen, confronting this man, he made his first statement, —his last statement he said, and these addendas, nobody ever dreamed of them, and Frank had no chance to meet them; that's the truth. You ought to tell the truth; if a man is involved for his life; that's the truth.

Mr. Dorsey (resuming): It don't make any difference about your addendas and you may get up there just as much as you want to, but I'm going to put it right up to this jury—

Mr. Rosser: May it please the Court, have I got the right to interrupt him when he mis-states the facts?

The Court: Whenever he goes outside of the record.

Mr. Rosser: Has he got the right to comment that I haven't exercised my reasonable rights?

The Court: No, sir, not if he has done that.

Mr. Rosser: Nobody has got a right to comment on the fact that I have made a reasonable objection.

Mr. Dorsey: But I'm inside of the record, and you know it, and the jury knows it. I said, may it please your Honor, that this man, Frank, declined to be confronted by this man Conley.

Mr. Rosser: That isn't what I objected to, he said that at that meeting that was proposed by Conley, as he says, but really proposed by the detectives, when I was out of the city, that if that had been met, I would have known Conley's statement, and that's not true; I would not have been any wiser about his statement than I was here the other day.

The Court: You can comment upon the fact that he refused to meet Frank or Frank refused to meet him, and at the time he did it, he was out of the city.

Mr. Arnold: We did object to that evidence, Your Honor, but Your Honor let that in.

The Court: I know; go on.

Mr. Dorsey (resuming) They see the force of it—

Mr. Rosser: Is that a fair comment, Your Honor, if I make a reasonable objection, to say that we see the force of it.

The Court: I don't think that, in reply to your objection, is a fair statement.

Mr. Dorsey (resuming): Now, may it please Your Honor, if they don't see the force of it, you do—

Mr. Rosser: I want to know, is Your Honor's ruling to be absolutely disregarded like that?

The Court: Mr. Dorsey, stay inside of the record, and quit commenting on what they say and do.

Mr. Dorsey: I am inside of the record, and Your Honor knows that's an entirely proper comment.

Mr. Rosser: Your Honor rules—he says one thing and then says your Honor knows better.

Mr. Dorsey: Your Honor knows I have got a right to comment on the conduct of this defendant.

The Court: Of course, you have, but when they get up and object, I don't think you have any right to comment on their objections as they are making them to the Court.

Mr. Dorsey: I don't?

The Court: No, I don't think so.

Mr. Dorsey: Isn't everything that occurs in the presence of the Court the subject matter for comment?

The Court: No, I don't think you can comment on these things. You can comment on any conduct within the province of this trial, but if he makes an objection that's sustained, why, then you can't comment on that.

Mr. Dorsey: Does your Honor say I'm outside of the record?

The Court: No, I don't, but I say this, you can comment on the fact that Frank refused to meet this man, if that's in the record, you have the right to do that.

Mr. Dorsey (resuming): This man Frank, with Anglo-Saxon blood in his veins, a graduate of Cornell, the superintendent of the pencil factory, so anxious to ferret out this murder that he 'phoned Schiff three times on Monday, April 28th, to employ the Pinkerton Detective Agency, this man of Anglo-Saxon blood and intelligence, refused to meet this ignorant negro, Jim Conley. He refused upon the flimsy pretext that his counsel was out of town but when his counsel returned, when he had the opportunity to know at least something of the accusations that Conley brought against this man, he dared not let him meet him.

Movant says that the Court erred in allowing the Solicitor-General to comment upon an alleged failure of the defendant to meet the witness, Conley and erred, when the defendant's counsel objected and interrupted him, the same not being authorized by the evidence, and erred in not stopping the Solicitor-General, and erred in not making a decisive and unequivocal ruling that such comment was improper, and should not influence the jury, and further erred in allowing the Solicitor-General to comment, as he did in the foregoing statement of facts, upon the interruption; and the Court expressly erred in ruling that the Solicitor-General could comment upon the fact that Frank refused to meet Conley; and because of such failures and errors on the Court's part, and because of such improper and prejudicial argument by the Solicitor-General, the movant says that a new trial should be granted him.

99. Movant further says that a new trial should be granted because of the following:

The Solicitor-General, in his concluding argument, referring to the visit of the defendant to Bloomfield's undertaking establishment, on April 27, made the following remarks to the jury:

Frank says that he visited the morgue not only once but twice. If he went down there and visited that morgue, and saw that child and identified her body, and it tore him all to pieces, as he tells you it did, let any honest man, I don't care who he be, on this jury, seek to fathom the mystery of this thing; tell me why it was, except for the answer I give you, he went down there to view that body again. Rogers says he didn't look at it; Black says he didn't see him look at it.

Whereupon the following occurred:

Mr. Rosser: He is mis-stating the evidence. Rogers never said he didn't look at the body, he said he was behind him, and didn't know whether he did or not; and Black says he didn't know whether he did or not.

Mr. Dorsey: Rogers said he never did look at that body.

Mr. Arnold: I insist that isn't the evidence. Rogers said he didn't know, and couldn't answer whether he saw it or not, and Black said the same thing.

Mr. Dorsey (resuming): I am not going to quibble with you. The truth is, and you know it, that when that man Frank went down there to look at that body of that poor girl, to identify her, that he never went in that room, and if he did look at her long enough to identify her, neither John Black nor Rogers nor Gheesling knew it. I tell you, gentlemen of the jury, that the truth of this thing is that Frank never looked at the body of that poor girl, but if he did, it was just a glance, as the electric light was flashed on and immediately turned and went into another room.

Mr. Rosser: There isn't a bit of proof that he went into another room, I object again, sir, there isn't a particle of proof of that.

The Court: Look it up and see what was said.

Mr. Dorsey: I know this evidence.

Mr. Rosser: If your Honor allows it to go on, there's no use looking it up. He never said anything about going into another room.

The Court: What is your remembrance about that.

Mr. Rosser: It isn't true, your Honor.

Mr. Dorsey: I challenge you to produce it.

Mr. Rosser: There's no use to challenge it, if he goes on and makes the argument they make, those deductions for which there's no basis, but when he makes a mis-statement of the evidence, it's perfectly useless to go on and look it up, and we decline to look it up.

Mr. Dorsey: I insist that they look it up. I insist that I am sticking to the facts.

Mr. Rosser: No, your are not.

The Court: Well, if you'll give me the record, I'll look it up. Mr. Haas, look that up, and see what is the fact about it.

Mr. Dorsey: I know what Boots Rogers said myself.

The Court: The jury knows what was said.

Mr. Dorsey: That's quibbling.

Mr. Arnold: Is that correct, your Honor?

The Court: No, that's not correct; whenever they object, Mr. Dorsey, if you don't agree upon any record, have it looked up, and if they are right and you know it, and you are wrong, or if they are wrong and you also know it, if they are wrong they are quibbling, and if they are right they are not quibbling. Now, just go on.

Mr. Rosser: Now, the question of whether Boots said he went into that room is now easily settled. (Mr. Rosser here read that portion of the cross examination of the witness Rogers, stating that when Frank left the door of the undertaking room, he went out of his view.)

Mr. Dorsey: Well, that's cross examination, ain't it?

Mr. Rosser: Yes, but I presume he would tell the truth on cross examination, I don't know; he passed out of his view, he didn't say he went into a room.

Mr. Dorsey: Correct me if I'm wrong. Boots Rogers said he didn't go where the corpse lay, and that's the proposition we lay down.

Mr. Rosser: That isn't the proposition either; now you made a statement that isn't true, the other statement isn't true. Rogers said that when he left "he went out of my view," he was practically out of his view all the time. I was just trying to quote the substance of that thing.

Mr. Dorsey (resuming): He wanted to get out of the view of any man who represented the majesty and dignity of the law, and he went in behind curtains or any old thing that would hide his countenance from these men. And he said on the leading examination—

Mr. Rosser: I don't know what you led out of him, but on the cross he told the truth.

Movant shows that under the foregoing facts, the Court erred in not making any ruling at all, and erred in allowing the Solicitor-General to proceed with his illegal argument, which was not founded on the evidence, and erred, and in not rebuking the Solicitor-General, and in not stating to the jury that the Solicitor-General had mis-stated the evidence in the particulars ojbected to, and erred in not telling the jury that there was no evidence in the case that Rogers had sworn that defendant did not look at the body of Mary Phagan, or that Frank went into another room; and because of the aforesaid errors in acting and failing to act, on the part of the Court, and because of such illegal and improper argument of the Solicitor-General, a new trial should be granted.

100. Movant further says that a new trial should be granted because of the following:

The Solicitor-General, in his concluding argument, spoke as follows to the jury, the subject under discussion being the whereabouts of the key to the elevator box on Sunday morning, April 27, the language of the Solicitor-General being as follows:

"Why don't they bring the fireman here who went around and gave such instructions? First, because it wasn't necessary, they could have cut the electricity off and locked the box. And second, they didn't bring him because no such man ever did any such thing, and old Holloway told the truth before he came to the conclusion that old Jim Conley was his nigger, and he saw the importance of the proposition that when Frank went there Sunday morning the box was unlocked and Frank had the key in his pocket."

Whereupon the following occurred:

Mr. Rosser: You say Mr. Frank had the key in his pocket? No one mentioned it, that isn't the evidence; I say it was hung up in the office, that's the undisputed evidence.

Mr. Dorsey: Holloway says when he got back Monday morning it was hung up in the office, but Boots Rogers said this man Frank—and he was sustained by other witnesses—when he came there to run that elevator Sunday morning, found that power box unlocked.

Mr. Rosser: That's not what you said.

Mr. Dorsey: Yes, it is.

Mr. Rosser: You said Frank had the key in his pocket next morning, and that isn't the evidence, there's not a line to that effect.

The Court: Do you still insist that he had it in his pocket?

Mr. Dorsey: I don't care anything about that; the point of the proposition, the gist of the proposition, the force of the proposition is that old Holloway stated, way back yonder in May, when I interviewed him, that the key was always in Frank's office; this man told you that the power box and the elevator was unlocked Sunday morning and the elevator started without anybody going and getting the key.

Mr. Rosser: That's not the point he was making; the point he was making, to show how clearly Frank must have been connected with it, he had the key in his pocket. He was willing to say that, when he ought to know that's not so.

The Court: He's drawing a deduction that he claims he's drawing.

Mr. Rosser: He doesn't claim that. He says the point is it was easily gotten in the office, but that's not what he said.''

The Court: You claim that's a deduction you are drawing?

Mr. Dorsey: Why, sure.

The Court: Now, you don't claim the evidence shows that?

Mr. Dorsey: I claim that the power box was standing open Sunday morning.

The Court: Do you insist that the evidence shows he had it in his pocket?

Mr. Dorsey: I say that's my recollection, but I'm willing to waive it; but let them go to the record, and the record will sustain me on that point, just like it sustains me on the evidence of this man Rogers, which I'm now going to read.

Movant says that the Court erred in not rebuking the Solicitor-General for the foregoing improper argument which was not warranted by the evidence, and erred it not stating to the jury that there was no evidence that Frank had the key in his pocket, and in allowing the Solicitor-General to proceed unrebuked and uninterrupted with said illegal argument, and in not making a square and decisive ruling, upon the objection of the defendant, and in allowing the Solicitor-General to proceed with said claim that Frank had the key in his pocket, as a deduction, the same being totally unwarranted; and for said illegal and erroneous actions, and failures to act, by the Court, and for said illegal and improper argument, a new trial should be granted.

101. Movant says that a new trial should be granted, because of the following:

The Solicitor-General, in his concluding argument, in referring to the testimony of the physicians introduced by the defendant, spoke as follows:

''It wouldn't surprise me if these able, astute gentlemen, viligant as they have shown themselves to be, didn't go out and get some doctors who have been the family physicians and who are well known to some of the members of this jury, for the effect it might have upon you.''

Whereupon the following colloquy occurred:

Mr. Arnold: There's not a word of evidence as to that, that's a grossly improper argument, and I move that that be withdrawn from the jury.

Mr. Dorsey: I don't state it as a fact, but I am suggesting it.

Mr. Arnold: He has got no right to deduct it or suggest it, I just want your Honor to reprove it, reprimand him and withdraw it from the jury; I just make the motion, and your Honor can do as you please.

Mr. Dorsey (resuming): I am going to show that there must have been something besides the training of these men, and I'm going to contrast them with our doctors.

Mr. Arnold: I move to exclude that as grossly improper. He says he's arguing that some physician was brought here because he was the physician of some member of the jury, it's grossly unfair and it's grossly improper and insulting even, to the jury.

Mr. Dorsey: I say it's eminently proper and absolutely a legitimate argument.

Mr. Arnold: I just record my objection, and if your Honor let's it stay in, you can do it.

Mr. Dorsey: Yes, sir; that wouldn't scare me, your Honor.

The Court: Well, I want to try it right, and I suppose you do. Is there anything to authorize that inference to be drawn?

Mr. Dorsey: Why, sure, why the fact that you went out and got general practitioners, that know nothing about the analysis of the stomach, know nothing about pathology.

The Court: Go on, then.

Mr. Dorsey: I thought so.

Mr. Arnold: Does your Honor hold that is proper, "I thought so?"

The Court: I hold that he can draw any inference legitimately from the testimony and argue it, I don't know whether or not there is anything to indicate that any of these physicians was the physicians of the family.

Mr. Rosser: Let me make the suggestion, your Honor ought to know that before you let him testify it.

The Court: He says he don't know it, he's merely arguing it from an inference he has drawn.

Mr. Dorsey (resuming): I can't see any other reason in God's world for going out and getting these practioners, who had never had any special training on stomach analysis, and who have not had any training with the analysis of tissues, like a pathologist has had, except upon that theory.

Movant shows that the Court erred is not rebuking the Solicitor-General for making such improper argument which was not authorized by the evidence, and in not stating to the jury that there was not a particle of evidence to the effect that any of the physicians were family physicians of any of the jurors, or that any of the physicians were put upon the stand for the effect it might have upon them for such reason; and the Court erred in allowing the Solicitor-General to proceed with such improper, unwarranted and highly prejudicial argument, and erred in allowing the Solicitor-General to comment, as the foregoing colloquy shows, upon the well-merited interruptions by defendant's counsel; and for such erroneous actions, and failures to act, by the Court, and for such illegal, unfounded and prejudical argument, the defendant says that a new trial should be granted.

102. Movant further says that a new trial should be granted because of the following:

The Solicitor-General, in his concluding argument, in referring to act of Judge Roan discharging the witness, Conley, from custody, stated:

"Judge Roan did it, no reflection on the Sheriff, but with the friends of this man, Frank, pouring in there at all hours of the night, offering him sandwiches and whiskey and threatening his life, things that this Sheriff, who is as good as the Chief of Police but no better, couldn't guard against because of the physical structure of the jail, Jim Conley asked, and His Honor granted the request, that he be remanded back into the custody of the honorable men who manage the police department of the City of Atlanta."

Whereupon the following occurred:

Mr. Rosser: No, that's a mistake, that isn't correct, your Honor discharged him from custody, he said that under that petition your Honor sent him back to the custody where you had him before, and that isn't true. Your Honor discharged him, vacated the order, that's what you did.

Mr. Dorsey: Here's an order committing him down there first—you are right about that, I'm glad you are right one time.

Mr. Rosser: That's more than you have ever been.

Mr. Dorsey (resuming): No matter what the outcome of the order may have been, the effect of the order passed by His Honor, Judge Roan, who presides in this case, was to remand him into the custody of the police of the City of Atlanta

Mr. Rosser: I dispute that, that isn't the effect of the order passed by his Honor, the effect of the order passed by his Honor was to turn him out, and they went through the farce by turning him out on the street and carrying him back. That isn't the effect of your Honor's judgment. In this sort of case, we ought to have the exact truth.

The Court: This is what I concede to be the effect of that ruling: I passed this order upon the motion of State's counsel, first, is my recollection, and by consent of Conley's attorney.

Mr. Rosser: I'm asking only for the effect of the last one.

The Court: On motion of State's counsel, consented to by Conley's attorney, I passed the first order, that's my recollection. Afterwards, it came up on motion of the Solicitor-General, I vacated both orders, committing him to the jail and also the order, don't you understand, transferring him; that left it as though I had never made an order, that's the effect of it.

Mr. Rosser: Then the effect was that there was no order out at all?

The Court: No order putting him anywhere?

Mr. Rosser: Which had the effect of putting him out?

The Court: Yes, that's the effect, that there was no order at all."

Mr. Dorsey (resuming): First, there was an order committing him to the common jail of Fulton county; second, he was turned over to the custody of the police of the city of Atlanta, by an order of Judge L. S. Roan; third, he was released from anybody's custody, and except for the determination of the police force of the City of Atlanta, he would have been a liberated man, when he stepped into this Court to swear, or he would have been spirited out of the State of Georgia, so his damaging evidence couldn't have been adduced against this man.

The Court erred in allowing the Solicitor-General to make the foregoing argument, over objection, which was not authorized by the evidence, and in not rebuking and correcting the Solicitor-General; and because of such failures

to act, and erroneous actions, by the Court, and because of such improper and illegal argument, movant says a new trial should be granted.

103. Because the Court erred in failing to charge the jury, in reference to the witness, Jim Conley, that if the witness wilfully and knowingly swore falsely as to a material matter, his testimony ought to be disregarded entirely, unless corroborated by the circumstances, or the testimony of other unimpeached witnesses.

The Court erred in failing to charge the jury that, if they believed from the evidence, that Conley watched for Frank, and that his purpose in watching was to assist in the commission of the crime of sodomy by Frank upon the person of Mary Phagan, sodomy being a felony, that then, Conley as to any alleged murder committed in the progress of any such attempt to commit sodomy, would be an accomplice; and the jury could not give credit to his testimony, unless corroborated by the facts and circumstances, or by other witnesses.

ROSSER & BRANDON,
HERBERT J. HAAS,
REUBEN R. ARNOLD,
Movant's Attorneys.

EXHIBIT A.

Georgia, Dougherty County.

The State of Georgia	} Indictment for Murder.
v.	} In Superior Court Fulton County, Georgia.
Leo M. Frank.	} Motion for New Trial.

Before me personally appeared R. L. Gremer, who being duly sworn deposes and says that he makes this affidavit to be used on the motion for new trial in the above case.

Further deposing he says that he is a resident of Albany, Ga., that he is acquainted with Mack Farkas, who works with Mr. Sam Farkas, who operates a livery stable and sale barn in Albany.

Further deposing, he says that between the time of the murder of Mary Phagan, and the trial of Leo M. Frank, the exact date this deponent can not state, deponent was standing in front of Mr. Sam Farkas's place of business on Broad Street in Albany, in the presence of Mack Farkas and others, including a party by the name of A. H. Henslee; said Henslee is the same party whose picture appears on page 2 of the Atlanta Georgian issue of August the 26th, and on page 2 of the issue of the same paper of August 23rd, as a juror in the Frank case.

At said time and place, deponent heard the said Henslee express his conviction that Frank was guilty of the murder of Mary Phagan; his exact language was "there can be no doubt that Frank is guilty. I know he is guilty," referring to the murder of Mary Phagan.

Further deposing he says, he stated to said Henslee "It is queer that a man of Frank's standing could be guilty of such a crime." Henslee said, "Without a doubt he is guilty." Deponent said "What do you mean by without a doubt?" Henslee said positively, "Without a doubt to my mind or to anyone else."

R. L. GREMER.

Sworn to and subscribed before me
Sept. 4th, 1913.
L. L. FORD,
Notary Public Dougherty County, Georgia.

EXHIBIT B.

Georgia, Dougherty County.

State of Georgia,	} Indictment for Murder.
v.	} In Superior Court Fulton County, Georgia.
Leo M. Frank.	} Motion for New Trial.

Before me, personally appeared Mack Farkas, who being duly sworn makes this affidavit, to be used on the motion for a new trial in the above case.

Deposing, he says that he is a resident of Albany, Ga., and is connected with Sam Farkas, Esq., who runs a livery stable and sale barn in Albany; further deposing, he says that between the time of the murder of Mary Phagan, and the trial of Leo Frank, he heard a party discussing the case in front of the place of business of the said Sam Farkas, in Albany, Ga., in the presence of this deponent and others, including one R. L. Gremer, also a resident of Albany, Ga., said party, whom this deponent recollects as being named Henslee, and whose picture appears on page 2 of the Atlanta Georgian of August 23rd, and on page 2 of the Atlanta Georgian of August 26th, as being one of the

Frank jury, expressed himself as being convinced of Leo M. Frank's guilt of the murder of Mary Phagan; the exact language used by said party, deponent does not recollect, but his recollection is that he used the words "I believe Frank is guilty," referring to the murder of Mary Phagan.

MACK FARKAS.

Sworn to and subscribed before me
this September 4, 1913.
L. L. FORD,
Notary Public Dougherty County, Georgia.

EXHIBIT C.

Georgia, Fulton County.
State of Georgia,
vs.
Leo M. Frank. } Fulton Superior Court.

Personally appears Julian A. Lehman, who being duly sworn makes this affidavit to be used on the motion for new trial in the above case.

Further deposing he says that he is personally acquainted with A. H. Henslee, one of the jurors in the above case; that on June 2, 1913, between Atlanta, Ga., and Experiment, Ga., the said Henslee expressed his opinion that Frank was guilty of the murder of Mary Phagan, and that this was in deponent's presence and hearing; and in the hearing of other persons on the train at the time; the words used to the best of deponent's knowledge and recollection were "Frank is as guilty as a damned dog, and ought to have his God damned neck broke"; this was in reference to Leo M. Frank, and before the trial.

Again, on June 20, 1913, the said Henslee made practically the same statement of and concerning the connection of Leo M. Frank with the murder of Mary Phagan in deponent's hearing.

On both occasions the said Henslee showed great feeling, he expressed the aforesaid conviction firmly and positively and vehemently.

JULIAN A. LEHMAN.

Sworn to and subscribed before me, this the
12th day of September, 1913.
ROBT. C. PATTERSON,
Notary Public Fulton County, Georgia.

EXHIBIT D.

State of Georgia, County of Fulton.
State of Georgia,
vs.
Leo M. Frank. } In Fulton Superior Court.

Before me, the undersigned officer authorized by law to administer oaths, personally appeared Samuel Aron, who being first duly sworn, deposes and says on oath as follows:

Deponent says that just after the indictment of Leo M. Frank for murder, as near as he can recall about two days after the indictment, this deponent was at the Elks Club on Ellis Street, Atlanta, Georgia; that at that time he saw one A. H. Henslee, not then known to this deponent by name, but now

known and recognized by this deponent as one of the jurors who tried the Frank case and returned a verdict of guilty; said A. H. Henslee was at said Elks Club at the time mentioned, and made the statement in this deponent's hearing: "I am glad they indicted the God dam Jew. They ought to take him out and lynch him. And if I get on that jury I'd hang that Jew sure." This statement was made in connection with the indictment of Leo M. Frank for the murder of Mary Phagan, and made in this deponent's hearing by the said A. H. Henslee, who afterwards served on said jury and brought in a verdict of guilty.

At this time this deponent left the Club, not caring to get into the argument, which was becoming heated and which was very condemnatory of Leo M. Frank by the said A. H. Henslee.

SAMUEL ARON.

Sworn to and subscribed before me
this 3rd day of October, A.D. 1913.
ROBT. C. PATTERSON,
Notary Public Fulton County, Georgia.

EXHIBIT E.

State of Georgia, County of Fulton.

State of Georgia,
vs.
Leo M. Frank. } Fulton Superior Court.

Before me personally appear L. Z. Rosser, Morris Brandon, R. R. Arnold, and H. J. Haas, who, being duly sworn, depose and say that they are the sole counsel of defendant in the above case, and they make this affidavit to be used as evidence on the motion for new trial in said case.

Further deposing, they say that, since the trial of said case and the verdict and sentence therein, it has come to their knowledge that two of the jurors who sat on said case, to-wit: M. Johenning and A. H. Henslee, were prejudiced, partial and biased against Leo M. Frank, the defendant, as evidenced by affidavits attached to motion and hereinafter referred to; that said prejudice, partiality and bias were present on their part, when said Johenning and Henslee qualified as jurors in said case as shown by said affidavits, but that the facts were unknown to these deponents at the time of the trial of said case, and at the time said jurors qualified on the voir dire of said case; and these deponents had no means of knowing said facts until after said trial.

Further deposing, they say that not until after the trial of said case did they know or have any means of knowing that said Johenning and Henslee, or either of them, had made any statement of any kind to, or in the presence of, any of the following persons, to-wit: H. C. Lovenhart, Mrs. J. G. Lovenhart, Miss Mariam Lovenhart, S. Aron, Mack Farkas, R. L. Gremer, Jno. M. Holmes, Shi Gray, S. M. Johnson, J. J. Nunnally, W. L. Ricker, J. A. Lehman, C. P. Stough, or any other person, of and concerning said Leo Frank in connection with the murder of Mary Phagan, or in connection with said trial, or the possible outcome of said trial.

Further deposing they say that they have been guilty of no laches in this matter, but that they have used every means of obtaining the facts in connection with statements made by said persons, and all of them, and all of said statements have come to their knowledge since the rendition of the verdict and sentence in said case, as is shown by the dates mentioned in the jurats to each

affidavit, and deponents have brought same to the attention of the Court at the earliest possible moment at which the Court could take cognizance of said affidavits after the trial, which is the date on which the rule ni si is on return; that is, October 4, 1913, same being on that day presented to the Court as part of the motion for new trial.

Further deposing, deponents say that, had they known at the trial of any of the facts or statements of the jurors, which would disqualify, or tend to disqualify, said jurors, or either of them, when said jurors were put upon the voir dire in said case, these deponents would have brought the same to the attention of the Court at said time.

L. Z. ROSSER,
MORRIS BRANDON,
REUBEN R. ARNOLD
HERBERT J. HAAS.

Sworn to and subscribed before me,
by each of the above four-named
deponents, this October 22, 1913.
E. D. THOMAS,
Notary Public, Fulton County, Georgia.

EXHIBIT F.

Georgia, Fulton County.
State of Georgia,
vs.
Leo M. Frank. } Fulton Superior Court.

Personally appeared Mrs. Jennie G. Loevenhart, who makes this affidavit to be used on motion for a new trial in the above stated case.

Deposing on oath she says that she is personally acquainted with M. Johenning, one of the jurors who served in the trial of Leo M. Frank for the murder of Mary Phagan.

Further deposing she says that during May, 1913, said M. Johenning met deponent and deponent's daughter on Forsyth Street, Atlanta, Georgia, and then and there the said M. Johenning expressed to the deponent and deponent's daughter his firm belief that Leo M. Frank was guilty of the murder of Mary Phagan. This statement was made by M. Johenning forceably and positively as his profound conviction.

MRS. JENNIE G. LOEVENHART.

Sworn to and subscribed before me
this 26th day of September, 1913.
C. W. BURKE,
Notary Public, Fulton County, Georgia.

EXHIBIT G.

Georgia, Fulton County.
State of Georgia,
vs.
Leo M. Frank. } Fulton Superior Court.

Before me personally appeared H. C. Loevenhart, who makes this affidavit to be used on motion for a new trial in the above stated case.

Deposing on oath he says that for some eighteen months prior to July, 1913, he was connected with the Hodges Broom Works in the city of Atlanta;

that he is personally acquainted with M. Johenning, one of the jurors in the above stated case, and that during the month of May, 1913, said M. Johenning had a conversation with this deponent, in which he discussed the death of little Mary Phagan.

Further deposing he says that in said conversation the said juror, M. Johenning, expressed his opinion to deponent that Frank was guilty of the murder of Mary Phagan, and that it was his profound conviction.

H. C. LOEVENHART.

Sworn to and subscribed before me
this 2nd day of September, 1913.
C. W. BURKE,
Notary Public, Fulton County, Georgia.

EXHIBIT H.

Georgia, Fulton County.

State of Georgia, vs. Leo M. Frank. } Fulton Superior Court.

Before me personally appeared Miss Miriam Loevenhart, who makes this affidavit to be used on motion for a new trial in the above stated case.

Deposing on oath she says that she is personally acquainted with M. Johenning, a juror, who served in the above stated case; she says that prior to the trial of Leo M. Frank, said juror, M. Johenning, had a conversation with this deponent and deponent's mother, and in their presence expressed his profound conviction that Leo M. Frank was certainly guilty of the murder of Mary Phagan.

Further deposing she says that said M. Johenning made this statement, positively, almost vehemently, and that his exact language, which was in response to a remark from this deponent in reference to the case was, as near as deponent recalls, "I know that he is guilty," referring to Leo Frank. Said M. Johenning made this statement more than once to this deponent before the commencement of the trial of Leo M. Frank for murder.

MIRIAM LOEVENHART.

Sworn to and subscribed before me
this 2d day of September, 1913.
C. W. BURKE,
Notary Public, Fulton County, Georgia.

EXHIBIT I.

Georgia, Fulton County.

State of Georgia, vs. Leo M. Frank. } In Fulton Superior Court. Conviction of Murder. July Term, 1913. Motion for New Trial.

Personally came before the undersigned, Leo M. Frank, who upon oath says that he is the defendant in the above stated case, and that his sole counsel in said case were L. Z. Rosser, Morris Brandon, R. R. Arnold and H. J. Haas.

Affiant further says that at and before said trial was entered on, and during the whole of said trial that affiant had no knowledge whatsoever as to M. Johenning and A. H. Henslee, two of the jurors, being prejudiced, partial and biased in said case, as evidenced by the affidavits of H. C. Lovenhart, Mrs. J. C. Lovenhart, Miss Marian Lovenhart, S. Aron, Max Farkas, R. L. Grener, John W. Holmes, Shi Gray, S. M. Johnson, J. J. Nunnally, W. L. Ricker, J. A. Lehman, and C. P. Stough. Affiant did not know either of said jurors and had never seen or heard of them before.

Further deposing, affiant says that he did not know until after the trial, and did not have any means of knowing until after said trial, that said Johenning and said Henslee, or either of them, had made any statement of any kind to or in the presence of any of the persons hereinbefore named. Affiant further says that before said trial, at the time of entering upon said trial, and during said trial, he had no knowledge or means of knowing that said persons were prejudiced, partial or biased as is shown by the affidavits or depositions of the persons named, and the facts stated in said affidavits and depositions were unknown to this affiant until after the verdict and sentence in this case. He further says that he has been guilty of no laches in this matter, and has, together with his counsel, used all the means at hand to obtain the facts and circumstances in connection with the statements made by said parties and all of them. The said facts were discovered after the verdict and sentence of the court in the case above stated, and the affidavits of said witnesses were taken on the dates shown in the jurat to each affidavit, and the same are brought to the attention of the Court by being presented on the day for the return of the rule nisi, which is October 4th, 1913, and which is the earliest time at which such affidavits could be brought to the attention of the Court.

Affiant further says that had he known at the trial of any facts or statements which would disqualify, or tend to disqualify, said jurors, or either of them, when said juors were upon their voir dire in said case, that this affiant would have had his counsel bring the same to the attention of the Court promptly at that time.

LEO M. FRANK.

Sworn to and subscribed before me
this 3rd day of October, 1913.
SAML. H. BREWTON,
Notary Public, Fulton County, Georgia.

EXHIBIT J.

Georgia, Fulton County.

State of Georgia,
Versus
Leo M. Frank. } No.....
Fulton Superior Court.

Personally appeared W. P. Neill, who makes this affidavit to be used on a motion for new trial in the above stated case.

Deposing he says on oath that he was present in the court-room during the trial of Leo M. Frank for the murder of Mary Phagan, for two full days during the trial, and from time to time on other days; that at the time of the facts hereinafter stated, deponent was sitting just where the jury passed by going from the jury box to the rear end of the court-room, he was sitting on the front row of the spectators' benches.

During the course of the trial deponent saw the jury pass to the jury box from the rear of the court room, the jury passed immediately by this deponent and also by a man, whose name is unknown to this deponent, but who was a spectator in the court-room, who was sitting about three feet from this deponent, just across the aisle, no one being between this man and deponent; as the jury passed this man, at the time specified, this man took hold of one of the jurors, he took the juror by the hand with one hand and grasped his arm with the other hand and made a statement to him, said something to the juror which this deponent did not understand sufficiently to be able to quote, but this deponent says that he made some statement to the juror while he had him thus by the hand and arm.

Further deposing he says that this act was witnessed by Plennie Minor, so this deponent believes, for the reason that as soon as this happened, the said Plennie Minor immediately came back to this man and threatened to put him out of the court.

Plennie Minor told this man that he, Plennie Minor, saw him, the man, take the juror by the hand and say something to him; the man remonstrated with Plennie Minor, and this deponent heard Plennie Minor repeat to him that he, Plennie Minor, saw him, the man, speak to the juror.

Deponent further says that on two occasions, while he was sitting in the court-room, at the trial, at one time while he was about six to ten feet from the jury, this deponent heard shouts and cheering on the outside of the house from the crowds collected outside. One of said times was during Dorsey's speech.

While this deponent does not say whether or not the jury heard this cheering, he does say that he, the deponent, heard it, plainly and distinctly and was within a few feet of the jury at the time he heard it.

W. P. NEILL.

Sworn to and subscribed before me
this September 9, 1913.
VIRLYN B. MOORE,
Notary Public, Fulton County, Georgia.

Further deposing he says that on an occasion he heard cheering in the court-room; the Judge said that unless the cheering stopped he would have to clear the court-room; and to this, Deputy Sheriff Minor replied that that would be the only way he could stop the cheering in the court-room.

W. P. NEILL.

Sworn to and subscribed before me
this September 9, 1913.
VIRLYN B. MOORE,
Notary Public, Fulton County, Georgia.

EXHIBIT K.

Georgia, Fulton County.

The State of Georgia
vs.
Leo M. Frank. } Fulton Superior Court.

Personally appeared before the undersigned, a Notary Public in and for said county, B. M. Kay, who on oath says that he is a resident of the city of Atlanta, living at No. 264 South Pryor Street. Deponent says further that on Saturday evening, August 23, 1913, about 8 or 8:30 o'clock, p. m., he was driving in his father's automobile down South Pryor Street, going south, there

being in the automobile with him his mother, Mrs. Rose Kay, and his brother, Sampson Kay; that as the automobile approached the corner of South Pryor and East Fair Streets, he observed the jurymen in the Frank case turn into South Pryor from the east, out of East Fair Street, and deponent stopped his automobile to look at the jury, and upon doing so noticed that walking alongside the jury were some six or seven other men. Deponent was on the west side of South Pryor Street while the jury in the above entitled case was walking north along the east side of Pryor Street. Deponent's brother Sampson Kay got out of the automobile stating to deponent that he was going to follow the jury.

B. M. KAY.

Sworn to and subscribed before me
this 4th day of September, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT L.

Georgia, Fulton County.

The State of Georgia
vs.
Leo M. Frank. } Fulton Superior Court.

Personally appeared before the undersigned, a Notary Public in and for said county, Miss Martha Kay, who on oath says that on the last day of the trial of Leo M. Frank in above stated case, August 25th, 1913, she was present in the court room and when the audience applauded Judge Roan stated to the sheriff that the cheering and demonstrations would have to stop or the court room would have to be cleared, to which the sheriff replied, "Your Honor, that is the only way it can be stopped."

MARTHA KAY.

Sworn to and subscribed before me
this 3d day of September, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT M.

Georgia, Fulton County.

The State of Georgia
vs.
Leo M. Frank. } Fulton Superior Court.

Personally appeared before the undersigned, a Notary Public in and for said county Mrs. A. Shurman, who on oath says that on the last day of the trial of Leo M. Frank in above stated case, August 25th, 1913, she was present in the court room when the audience applauded. Judge Roan stated to the sheriff that the cheering and demonstrations would have to stop or the court room would have to be cleared, to which the sheriff replied "Your Honor, that is the only way it can be stopped."

MRS. A. SHURMAN.

Sworn to and subscribed before me
this 3d day of September, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT N.

Georgia, Fulton County.
The State of Georgia
vs.
Leo M. Frank. } Fulton Superior Court.

Personally appeared before the undersigned, a Notary Public in and for said county, Mrs. A. Shurman, who on oath says that she is a resident of the city of Atlanta, living at No. 240 Central Avenue. Deponent says that on Monday morning, August 25th, 1913, the last day of the trial of the said Leo M. Frank, in the above stated cause, she was present in the court room in company with Miss Martha Kay, of No. 264 South Pryor Street, before time for court to open; that she saw the jury in said case enter said court room and take their places, and in a few moments Mr. Hugh M. Dorsey, the Solicitor-General of said court entered the room, just before he entered the room there was loud cheering in the street immediately outside the court house for "Dorsey," all of which was loud and long continued and plainly audible to any one in the court room; as Mr. Dorsey entered the court room there was also cheering in said court room. There was also applauding in the course of Mr. Dorsey's speech a couple of times on said date.

MRS. A. SHURMAN.

Sworn to and subscribed before me
this 3d day of September, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT O.

Georgia, Fulton County.
The State of Georgia
vs.
Leo M. Frank. } Fulton Superior Court.

Personally appeared before the undersigned, a Notary Public in and for said county, Miss Martha Kay, who on oath says that she is a resident of the city of Atlanta, living at No. 264 South Pryor Street. Deponent says that on Monday morning, August 25th, 1913, the last day of the trial of the said Leo M. Frank in the above stated case, she was present in the court room in company with Mrs. A. Shurman of No. 240 Central Avenue, before time for court to open; that she saw the jury in said case enter said court room and take their places, and in a few moments Mr. Hugh M. Dorsey, the Solicitor-General of said court entered the room, just before he entered the room there was loud cheering in the street immediately outside the court house for "Dorsey," all of which was loud and long continued and plainly audible to anyone in the court room; as Mr. Dorsey entered the court room there was also cheering in said court room. There was also applauding in the course of Mr. Dorsey's speech a couple of times on said date.

MARTHA KAY.

Sworn to and subscribed before me
this 3d day of September, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT P.

Georgia, Fulton County.

The State of Georgia
vs.
Leo M. Frank. } Fulton Superior Court.

Personally appeared before the undersigned a Notary Public in and for said county, Sampson Kay, who on oath says that he is a resident of the city of Atlanta, living at No. 264 South Pryor Street. Deponent further says that on Saturday evening, August 23rd, 1913, about 8 or 8:30 o'clock p. m. he saw the jury in the above entitled case walking along South Pryor Street with a deputy sheriff in front and another walking in the rear of said jury, said jury turning into South Pryor Street from East Fair Street, and thence up South Pryor Street to the Kimball House. Deponent followed the jury some 15 or 20 feet in the rear thereof, from E. Fair Street up South Pryor Street to near the corner of E. Mitchell and S. Pryor, when he passed ahead and waited on the corner of said streets until the jury had passed, and then continued to follow them up to the Kimball House. This deponent says that there were some six or seven men walking alongside the jurymen talking to them all the way from the corner of E. Fair and S. Pryor Streets, up to the Union Station just north of the corner of East Alabama and S. Pryor Street, when the men left them, and the jury went on and entered the Kimball House through the Wall Street entrance.

SAMPSON KAY.

Sworn to and subscribed before me
this 3d day of September, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton County, Georgia.

EXHIBIT Q.

State of Georgia, Fulton County.

The State of Georgia
vs.
Leo M. Frank. } Fulton Superior Court.

Personally appeared Samuel A. Boorstin, who, being duly sworn, on oath says: That on Friday evening, on the 22d day of August, 1913, at about 5 or 5:30 p. m., he was present at the court-room of Fulton Superior Court, Judge L. S. Roan, presiding, during the trial of the State versus Leo M. Frank; and, after adjournment, and when the jury had been taken from the court-room, and shortly thereafter, the Solicitor-General, Hugh M. Dorsey, had passed out of the court-room, there was a large crowd waiting outside, through which the jury passed, comprising, perhaps, no less than two or three thousand people; that this crowd did tumultuously and noisily applaud and cheer the Solicitor-General, and did congregate around the court-room on the outside, standing in great numbers, both on the street and on the sidewalks; that deponent, upon adjournment of court, was walking up Pryor Street from said court-room in a northerly direction, and when he reached Pryor and Alabama Streets, he saw two persons peering out of the third floor corner window in the Kimball House, looking in a southward direction at the large crowd congregated between the Kiser building and the court-house; that, as deponent continued walking northward and reached the restaurant in the

Union car shed, corner Pryor and Wall Streets, he still observed one of the figures in the jury-room peering southward, with both hands upon the window sill, whom he recognized as being Juror Smith, one of the jurors in the case of the State versus Leo M. Frank, then being on trial. The other person, who had his head through the window peering southward, had by this time stuck his head back into the room, and deponent could not tell who he was.

SAML. A. BOORSTIN.

Sworn to and subscribed before me
this 3d day of October, 1913.
J. H. LEAVITT,
Notary Public, Fulton County, Georgia.

EXHIBIT R.

Georgia, Fulton County:

State of Georgia, } Superior Court of Fulton County
vs. } Charged with Murder.
Leo Frank.

Personally appeared before the undersigned officer, W. B. Cate, who being duly sworn deposes and says; That on September the 1st, 1913, in the afternoon, I was standing at the corner of Alabama Street and S. Pryor Street, and had intended to go down S. Pryor Street to the Court House where the Frank trial was being conducted but was unable to get any closer to the Court House on account of the crowd that had gathered in the street, I was in about one block of the Court House. While I was standing at this place I heard a great deal of cheering and shouting, the street being full of men most of whom were making noise and cheering. I saw some one come out of the court house, whom I understood was Hugh Dorsey the Solicitor, and he was picked up by some of the crowd and carried across the street on the shoulders of the men who had him. I could not see the man that was carried on the shoulders of the men very well but was told that it was Dorsey. There was at this time fully three thousand men gathered around the Court House, filling the streets on all sides of the court house. I only know Col. Dorsey by sight.

W. B. CATE.

Sworn and subscribed to before me
me this Sept. 16, 1913.
VIRLYN B. MOORE,
Notary Public, Fulton County, Ga.

EXHIBIT S.

Georgia, Fulton County.

State of Georgia } In Fulton Superior Court.
vs. }
Leo M. Frank.

Personally apeared J. H. G. Cochran, who being duly sworn deposes and says that he is a resident of Atlanta, Georgia, remembers the close of the trial of Leo M. Frank, and was present in front of the Court House in Atlanta, Georgia, on the day that the case closed and on the day that the jury returned the verdict of guilty in said case.

On the day aforesaid, to-wit:—that the jury returned the verdict, Mr. Cochran was standing in front of the Court House at the time the jury came out of the Court House to go to dinner; at just about the same time or near that time, and while the jury were in the vicinity of the Court House, Solicitor-General Hugh M. Dorsey came out of the Court House and went across the street to the Kiser building.

Deponent says that at the appearance of Solicitor Dorsey on the street coming from the Court House the crowd in the street, numbering between five hundred (500) and one thousand (1,000) people, to the best of this deponent's estimate, broke into loud and tumultuous cheering of the Solicitor, the jury being at the time near the Court House and proceeding up Pryor Street and being within sight of this Deponent at the time the cheering commenced, and that said cheering lasted the whole time that the Solicitor-General was crossing the street and until he had entered the Kiser building.

This Deponent knows that this cheering which took place in the presence of the jury, or in their hearing, and while they were on Pryor Street a short distance from the Court House, was cheering for the Solicitor, and he remembers the Solicitor's stopping at the entrance of the Kiser Building and taking off his hat and bowing to the crowds who were cheering; not only were the crowds cheering him but people in the windows of the Kiser Building were also cheering and waving their hands and handkerchiefs at the Solicitor; all of which was practically in the presence of the jury, at least within their hearing, before they proceeded up Pryor Street. Further deposing he says that on said day the jury took dinner at the German Cafe, on South Pryor Street, a distance of approximately one hundred fifty (150) to two hundred (200) feet from the Kiser Building, and that both outside of the Cafe and in the Cafe, the cheering of the Solicitor-General could be heard by any person.

J. H. G. COCHRAN.

Sworn to and subscribed before me
this September 15th, 1913.
J. H. PORTER,
Notary Public, County of Fulton, State of Georgia

EXHIBIT T.

Georgia, Fulton County.
State of Georgia
vs.
Leo M. Frank.
} In Fulton Superior Court.

Personally appeared H. G. Williams, resident of Atlanta, Georgia, who deposes and says that on the day the Frank trial closed, and verdict of guilty was found by the jury against Leo M. Frank, accused of the murder of Mary Phagan, this Deponent was on South Pryor Street in front of the Court House.

This Deponent saw Solicitor Dorsey come from the Court House and cross the street to the Kiser Building in the presence of exceeding five hundred (500) people, who cheered his appearance at the entrance of the Court House with loud and continued cheering, which cheering continued until he had entered the Kiser Building across the street, and which cheering was acknowledged by Solicitor Dorsey at the entrance of the Kiser Building where he turned and raised his hat to the people who were cheering him.

Just preceding Solicitor Dorsey, the jury had come out of the Court House and had gone a short way up the street to the German Cafe for lunch; at the time of this cheering, which could be heard for a great distance on all sides of the Court House, the jury were in easy hearing distance of the noise during the whole time when the crowd was cheering Solicitor Dorsey.

Said demonstration over the Solicitor-General occupied not less than three (3) minutes, and perhaps not exceeding five (5) minutes, and took place on the last day of the trial, immediately after the jury had come from the Court House on their awy to dinner. Further deposing, this Deponent says that practically the same demonstration took place on Saturday preceding the time herinbefore specified, at the time when Solicitor Dorsey came from the Court House to go to his office and when the jury were proceeding from the Court House; said demonstration on Saturday being in the presence of the Solicitor and in the hearing of the jury, and being a demonstration over the Solicitor General.

H. G. WILLIAMS.

Sworn to and subscribed before me
this September 15th, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton County, State of Georgia.

EXHIBIT U.

Georgia, Fulton County.
State of Georgia,
vs.
Leo M. Frank.
} Fulton Superior Court.

Personally appeared before the undersigned a Notary Public in and for said county, E. G. Pursley, who on oath says that he is a resident of the City of Atlanta, residing at No. 50 Ponders Ave., with office at No. 700 Temple Court.

Deponent says that on Friday noon, before the above stated case went to the jury on Monday, he was present in the court room where the trial of Leo M. Frank was being held; that when court adjourned and the jury had left and gone to lunch he came out of the court house and there was loud cheering for "Dorsey," which lasted for several minutes. Deponent walked from the Court House to his office on the seventh floor of the Temple Court Building, and when he reached his office some one asked deponent what all the racket or fuss was about down the street.

E. G. PURSLEY.

Sworn to and subscribed before me
this 13th day of September, 1913.
ROBT. C. PATTERSON,
Notary Public, Fulton Co., Ga.

EXHIBIT V.

State of Georgia,
vs.
Leo M. Frank.

Personally appeared Marano Benbenisty, who on oath says that he was standing outside of the court house on Friday afternoon, August 22nd, at about 12:20, and I saw the jury come out of the court room. Soon after the

jury came out of the court room, Mr. Dorsey came out, and the crowd set up cheering and yelling "Hurrah for Dorsey." At the time of the yelling and cheering the jury was just crossing the street towards the Barbers' Supply Company, which is next to the Kiser Building. That in the opinion of the deponent there was about a thousand people crowding about the court room.

MARANO BENBENISTY.

Sworn to and subscribed before me
this 29th day of August, 1913.
C. A. STOKES,
Notary Public, Fulton County, Ga.

EXHIBIT W.

State of Georgia,
vs.
Leo M. Frank.

Personally appeared Isaac Hazan, who on oath says that he was standing outside of the court house on Friday afternoon, Aug. 22d, at about 12:20, and I saw the jury come out of the court room. Soon after the jury came out of the court room, Mr. Dorsey came out, and the crowd set up cheering and yelling "Hurrah," "Hurrah." At the time of the yelling and cheering the jury was just crossing the street towards the Barbers' Supply Company, which is next to the Kiser Building. That in the opinion of the deponent there was about a thousand people crowded about the court room.

Deponent further states that as the jury reached the other side of Pryor Street in front of the Barbers' Supply Company, deponent heard ten or fifteen men in front of the court house yelling toward the jury that unless they brought in a verdict of guilty, that they would kill the whole damn bunch; that in the opinion of your deponent, the jury must have heard them, because one of the jurors turned his face toward the yelling just when that occurred.

ISAAC J. HAZAN.

Sworn to and subscribed before me
this 29th day of August, 1913.
C. A. STOKES,
Notary Public, Fulton County, Ga.

EXHIBIT X.

Georgia, Fulton County.

Personally appeared John H. Shipp, who on oath says that on Friday, August 22, he was in room 301 of the Kiser Building, corner Hunter and So. Pryor Streets; that he saw the jury come out of the court house about six P. M.; that a few minutes after the jury came out of the court house, Mr. Dorsey appeared in the entrance, whereupon a great cheer arose from the people crowding in the streets and around the court house entrance; that at that time deponent saw the jury about fifty feet from the entrance of the court house, the jury at that time crossing diagonally toward the German Cafe; that in the opinion of deponent the yells and cheers could have been heard several blocks away; that the crowd yelled "Hurrah for Dorsey," and that the words were plainly audible.

Deponent further states that he was in room 301 of the Kiser Building, on Saturday, August 23; that he saw the jury emerge from the court house entrance at about one o'clock; that a few minutes after the jury came out, Mr. Dorsey came out and immediately a great crowd around the court house door set up a yell and cheer, saying "Hurrah for Dorsey," taking off their hats and throwing them in the air and otherwise exhibiting their enthusiasm; that at the time of the yelling, the jury was not in sight of deponent, but deponent is of the opinion that they were within easy hearing of the yelling and must have heard all that transpired.

Deponent further states that while he has been around the court house, during the progress of the trial, he has heard numerous threats of violence to the accused in case of an acquittal; that deponent knows that one of the persons making threats was armed, that he exhibited his weapon at time of making threat.

JOHN H. SHIPP.

Sworn to and subscribed before me
this 26th day of August, 1913.
C. A. STOKES,
Notary Public, Fulton County, Ga.

EXHIBIT Y.

The State of Georgia,
vs.
Leo M. Frank.

Personally appeared B. S. Lipshitz, who on oath says that he was out in front of the Court House, mingling with the crowd, at about one P. M. on Saturady, August 23, immediately after court adjourned; that deponent saw the jury come out and about one or two minutes thereafter, Mr. Dorsey came out, whereupon there was great cheering and yelling by the crowd; that at the time the yelling and cheering took place, the jury could not have been more than one minute's walk away from the court house, and in the opinion of deponent, they could have heard the cheering and yelling.

Deponent further states that he was also present at the court house on Friday evening, August 22nd, when Mr. Dorsey left the court house, and heard the cheering and heard the crowd yelling "Hurrah."

B. S. LIPSHITZ.

Sworn to and subscribed before me
this 26th day of August, 1913.
C. A. STOKES,
Notary Public, Fulton County, Ga.

EXHIBIT Z.

Georgia, Fulton County.

Personally appeared Charles J. Moore, who on oath says that he is an attorney at law, occupying room 301 on the third floor of the Kiser Building, at the corner of Hunter and So. Pryor Streets; that on Friday, August 22, deponent was in his office and saw the jury come out of the court house entrance at about six P. M.; that soon after Mr. Dorsey appeared in the court house entrance and a great cheering and yelling occurred by the crowd immediately

opposite the entrance, and afterwards the crowd yelled "Hurrah for Dorsey," and the volume of the yells were so great that they could have been heard many blocks away; that they threw up their hats and gave other demonstrations; that at the time of the yelling the jury was just crossing the street toward the German Cafe, not fifty feet away from the entrance, and in the opinion of deponent must have heard the cheering and the words "Hurrah for Dorsey," because they could be plainly heard.

Deponent further states that he was in his office on Saturday, August 23, when the jury came out of the court house at about one o'clock, and he heard yelling and cheering when Mr. Dorsey appeared a few minutes afterwards. Deponent did not see the jury at the time of the yelling, but it occurred so soon after the jury came out of the court house that in the opinion of the deponent the jury must have heard the cheering and the words that were yelled.

Deponent further states that since the trial has been in progress he has heard several parties making threats of personal violence against the accused in the event of an acquittal; that these parties were loitering in and around the court house entrance and making threats that if the jury did not hang Frank; that they would pay the jury the compliment of sitting on the case and if the jury did not do its duty, they would; that deponent recalls the names of R. W. Milner, Richard Dutton; that Milner loitered continuously around the court house entrance and circulated among the crowd.

CHARLES J. MOORE.

Sworn to and subscribed before me
this 26th day of August, 1913.
C. A. STOKES,
Notary Public, Fulton County, Ga.

EXHIBIT AA.

Georgia, Fulton County.

Personally appeared D. Rosinky, who on oath deposes and states that on Friday, August 22, and Saturday, August 23, he was standing near the corner of Hunter and South Pryor Street, in the City of Atlanta, Georgia, and that when the Solicitor-General, H. M. Dorsey, came out of the old City Hall Building, now used as a court house, there was a loud and vociferous cheering by the assembled crowd; that members of the crowd took the Solicitor in their arms and carried him across the street to the Kiser Building.

D. ROSINKY.

Sworn to and subscribed before me
this 26th day of August, 1913.
LEONARD HAAS,
Notary Public, Fulton County, Ga.

EXHIBIT BB.

Georgia, Dougherty County.

State of Georgia,
vs.
Leo M. Frank.
} In the Superior Court of Fulton County, Georgia.

Before me personally appears Mack Farkas, who being duly sworn deposes and says that attached to this affidavit is a carbon copy of an order made by Sam Farkas, of Albany, Georgia, to Franklin Buggy Company, Incorporated, of Barnesville, Georgia.

Said order is marked Exhibit "A." Said order was taken by A. H. Henslee, a traveling salesman for said Franklin Buggy Company, in person; said order was taken on the date same bears date, to-wit: on July 8th, 1913.

This affidavit is made to be used on the motion for new trial in the above case. The name A. H. Henslee, on said order, is the handwriting and carbon copy of the signature of A. H. Henslee.

MACK FARKAS.

Sworn to and subscribed before me
this October 21st, A. D., 1913.
L. L. FORD,
Notary Public, Dougherty County, Georgia.

EXHIBIT BB—(Continued)

Georgia, Dougherty County.

State of Georgia,
vs.
Leo M. Frank.
} In the Superior Court of Fulton County, Georgia.

Before me personally appears B. W. Simon, who being duly sworn deposes and says that attached to this affidavit is a carbon copy of an order made by Sam Farkas, of Albany, Georgia, to Franklin Buggy Company, Incorporated, of Barnesville, Georgia.

Said order is marked Exhibit "A." Said order was taken by A. H. Henslee, a traveling salesman for said Franklin Buggy Company, in person; said order was taken on the date same bears date, to-wit: on July 8th, 1913.

This affidavit is made to be used on the motion for new trial in the above case. The name A. H. Henslee, on said order, is the handwriting and carbon copy of the signature of A. H. Henslee.

B. W. SIMON.

Sworn to and subscribed before me
this October 21st, A. D., 1913.
L. L. FORD,
Notary Public, Dougherty County, Georgia.

EXHIBIT BB—(Continued)

Georgia, Dougherty County.

State of Georgia,
vs.
Leo M. Frank. } In the Superior Court of Fulton County, Georgia.

Before me personally appears Mack Farkas, who being duly sworn deposes and says that attached to this affidavit is a carbon copy of an order made by Sam Farkas, of Albany, Georgia, to Franklin Buggy Company, Incorporated, of Barnesville, Georgia.

Said order is marked Exhibit "A." Said order was taken by A. H. Henslee, a traveling salesman for said Franklin Buggy Company, in person; said order was taken on the date same bears date, to-wit: on July 8th, 1913.

This affidavit is made to be used on the motion for new trial in the above case. The name A. H. Henslee, on said order, is the handwriting and carbon copy of the signature of A. H. Henslee.

SAM FARKAS.

Sworn to and subscribed before me
this October 21st, A. D., 1913.
L. L. FORD,
Notary Public, Dougherty County, Georgia.

EXHIBIT BB—(Continued)

FRANKLIN BUGGY COMPANY, INC.
Manufacturers of the
"Improved Barnesville Buggy"
Barnesville, Georgia
July 8, 1913.

When Ship—At Once
How Ship

Ship to—Sam Farkas
Albany, Ga.

		BODY		GEAR		Axle	WHEELS					
Quantity	Cat. No.	Width	Style	Spring	Color	Drop Arch	Tread	Height	Top	Trimmings	Stripe	Price Each
1	44	20	R	Side	Bla	Arch	¾	38/42	R	R	R	62.50 } Net
1	Set Rubbers for Job 44-V-⅞											15.00 } Net
1	44	22	R	Side	Car	Arch	¾	38/42	R	R	R	62.50
1	44	22	R	Side	Car	Arch	¾	38/42	R	R	R	62.50 } Net
1	Set Rubbers for Job 44-V-⅞											15.00 } Net
1	44	23	R	Side	Bla	Arch	¾	38/42	R	R	R	62.50

TERMS: Oct. 1st, 2.50 per cent. discount if paid in 30 days from date of invoice; if not discounted in 30 days buyer agrees to give note to cover the account net 90 days, from date of invoice, note to be made payable to any banker in Georgia. All goods F. O. B. Barnesville, Ga. No freight allowance. All notes due after 90 days from invoice to bear interest at 8 per cent. per annum.

All orders subject to manufacturers' contingencies. This order not subject to countermand after 5 days. No agreement considered unless same be written in face of this order.

The title of goods delivered under this contract to remain in the name of the sellers until they shall have received money for same, and upon failure to make such payments the sellers shall repossess themselves and take away such goods. Should time be taken under the terms of settlement of this contract by buyer and he should become insolvent or in default, sellers shall have the right to declare the whole amount, including all paper given, to be due and collectible. The acceptance of the goods implies the acceptance of this condition. All orders entered as regular 5 ft. Track unless other Track is specified. All prices F. O. B. Barnesville, Ga.

Salesman—A. H. HENSLEE.

Signature—SAM FARKAS,
Pr B W Simon, B. K.

EXHIBIT CC.

Georgia, Walton County.
State of Georgia.
vs.
Leo M. Frank.
} In the Superior Court of Fulton County, Georgia.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appear J. J. Nunnally and W. L. Ricker, of Monroe, Georgia, who, being duly sworn, depose and say on oath as follows:

That they have seen in the public prints that A. H. Henslee, one of the jurors in the Frank case, admits having made certain statements as to Frank's guilt of the murder of Mary Phagan, but says these statements were made after the trial of Leo M. Frank, and not before.

These deponents say that, so far as they know, the said Henslee has not been in Monroe, Georgia, since the trial of Leo M. Frank, and they reiterate the statement that all the statements made in their hearing by said Henslee, and testified about by these deponents on September 27th, 1913, were made before the commencement of the trial of Leo M. Frank for the murder of Mary Phagan on July 28th, 1913; to the best of these deponents' recollection, these statements were made in June, 1913, although as to the exact month these deponents say not.

J. J. NUNNALLY,
W. L. RICKER.

Sworn to and subscribed before me
this October 10, A. D. 1913.
J. B. SHELNUTT, Clerk.
Superior Court, Walton County, Georgia.

EXHIBIT DD.

Georgia, Fulton County.
State of Georgia.
vs.
Leo M. Frank.
In the Superior Court of Fulton County, Georgia.

Before me personally appears Julian A. Lehman, who, being duly sworn, deposes and says on oath that he makes this affidavit for use in motion for new trial in above stated case.

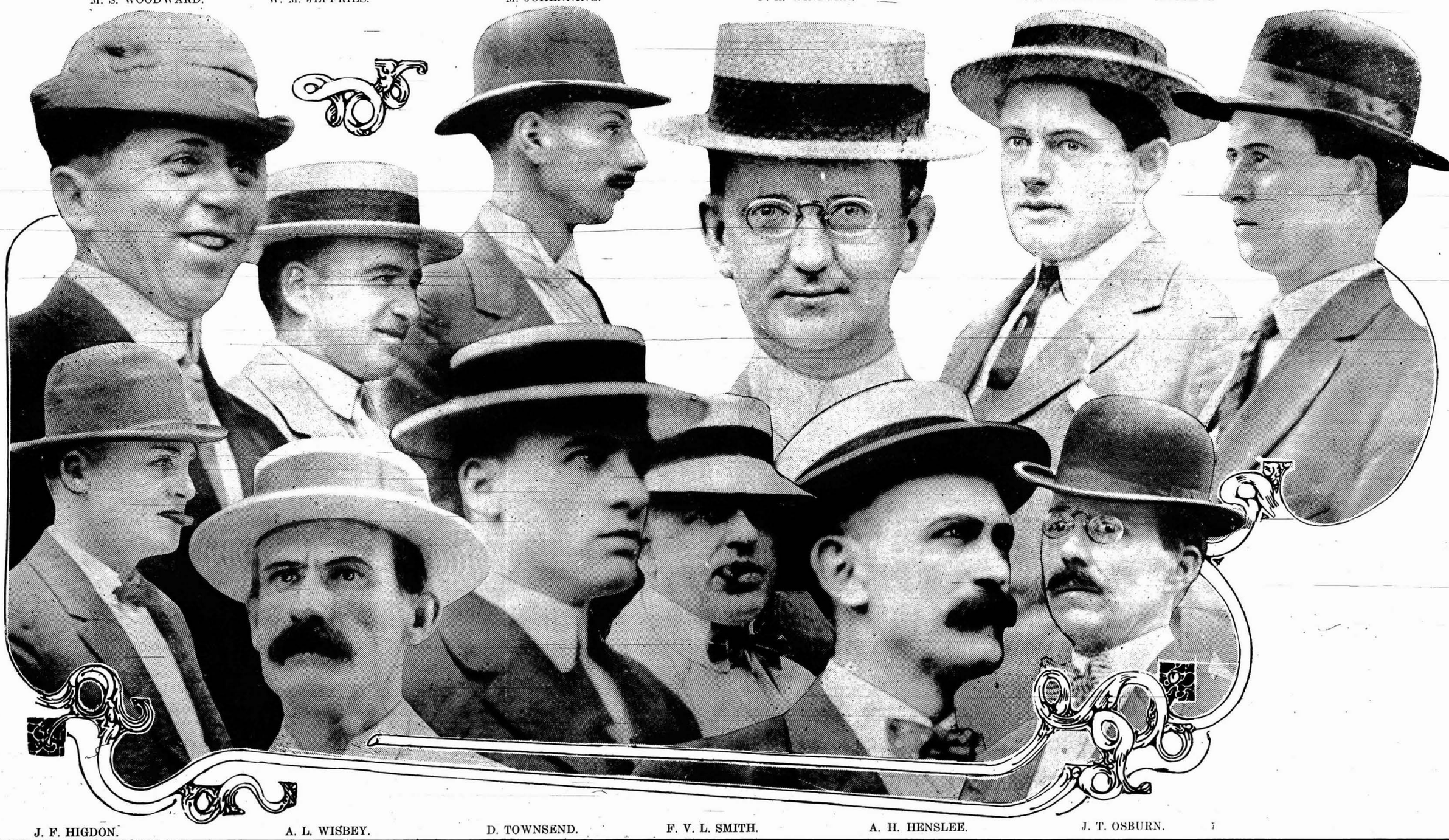
Further deposing, he says on oath that he reiterates his statement heretofore made under oath that between the time of the murder of Mary Phagan, as reported by the newspapers, and the commencement of the trial of Leo M. Frank on July 28th, 1913, he, on two occasions, heard A. H. Henslee, a juror in said case, express himself firmly and positively as to the guilt of Leo M. Frank of the murder of Mary Phagan, in the language set forth in the affidavit heretofore made by this deponent and attached to the original motion for new trial in said case; one of said times was on or about June 20th, 1913, another time was early in the month of June, to the best of this deponent's recollection near June 2nd, but as to the exact date this deponent can not state.

JULIAN A. LEHMAN.

Sworn to and subscribed before me
this 13th day of October, A. D. 1913.
J. H. PORTER,
Notary Public, Fulton County, Ga.

TWELVE JURORS WITH WHOM LEO M. FRANK'S FATE RESTS

M. S. WOODWARD. W. M. JEFFRIES. M. JOHENNING. F. E. WINBURN. C. J. BOSSHARDT. W. F. MEDCALF.



J. F. HIGDON. A. L. WISBEY. D. TOWNSEND. F. V. L. SMITH. A. H. HENSLEE. J. T. OSBURN.

EXHIBIT GG.

Georgia, Hancock County.

State of Georgia,
vs.
Leo. M. Frank. } In the Superior Court of Fulton County, Ga.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me; who, being duly sworn, depose and say on oath:

That they are personally acquainted with Jno. M. Holmes, Shi Gray and S. M. Johnson; and that said Holmes, Gray and Johnson are each men of the highest personal and moral character and reputation, and that they are each entirely trustworthy, and worthy of belief, as to any statement made by them, or each of them.

T. B. HIGHTOWER,
Sheriff Han. Co., Ga.
W. H. BURWELL.
HENRY H. LITTLE,
Ordinary.
FRANK L. LITTLE,
Chairman Bd. of Education, Sparta.
T. M. HUNT.
H. D. CHAPMAN,
Tax Collector Han. Co.
THOS. F. FLEMING.
H. L. MIDDLEBROOKS,
Cashier First Nat. Bk.
G. W. RIVES,
Mayor of Sparta.
R. E. WHEELER,
Cashier Sparta Savings Bank.
D. E. WILEY,
Clerk Superior Court.
A. H. BIRDSONG,
Treasurer Hancock Co.
E. A. ROZIER,
V-Pres. Bank of Sparta.
J. D. BURNETT,
Csr. Bk. of Sparta.

Sworn to and subscribed before me
this October 8th, 1913.
J. D. LEWIS,
Notary Public Hancock County, Georgia.

EXHIBIT HH.

Georgia, Fulton County.

State of Georgia,
vs.
Leo. M. Frank. } In the Superior Court of Fulton County, Ga.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me, who, being duly sworn, depose and say on oath:

That they are personally acquainted with Julian A. Lehman; and that said Lehman is a man of the highest personal and moral character and reputation, and that he is entirely trustworthy, and worthy of belief, as to any statement made by him.

W. F. UPSHAW.
S. E. PRUMAN.
HENRY B. KENNEDY.

Sworn to and subscribed before me
this October 16th, A. D. 1913.
C. W. BURKE,
Notary Public Fulton County, Georgia.

EXHIBIT HH—Continued.

Georgia, Muscogee County.

State of Georgia,
vs.
Leo M. Frank. } In the Superior Court of Fulton County, Georgia.

Before me, an officer authorized under the laws of Georgia to administer oaths, personally appears each of the undersigned persons, personally known to me, who, being duly sworn, depose and say on oath:

That they are personally acquainted with Julian A. Lehman; and that said Lehman is a man of the highest personal and moral character and reputation, and that he is entirely trustworthy, and worthy of belief, as to any statement made by him.

C. W. MIZELL.
R. P. SPENCER, JR.

Sworn to and subscribed before me
this October 15th, A. D. 1913.
J. B. STEPHENS,
Notary Public Muscogee County, Georgia.

EXHIBIT II.

Georgia, Fulton County.

State of Georgia,
vs.
Leo. M. Frank. } In Fulton Superior Court.

Personally appeared the undersigned deponents who, being duly sworn, depose and say that they are personally acquainted with C. P. Stough, of Atlanta, Fulton County, Georgia, and that they know him to be a man of high personal character, entirely trustworthy, and absolutely worthy of belief as to any statement made by him, whether on oath or otherwise.

A. L. GUTHMAN.
L. P. STEPHENS.
A. H. VANDYKE.

Sworn to and subscribed before me
this 22d day of October, 1913.
C. W. BURKE,
Notary Public Fulton County, Georgia.

EXHIBIT JJ.

State of Georgia,
County of Muscogee.

Personally appeared before me, an officer duly authorized by law to administer oaths, the undersigned who, being sworn, deposes and says that he was head clerk at the New Albany Hotel (Albany Hotel Company, proprietors), located at Albany, in said state and county, all during the months of June, July and August, 1913, and for several years prior to that time; and that attached hereto, marked "Exhibit A," is the register of guests at said hotel from the 20th day of June, 1913, to the 31st day of August, 1913; and that there was no other register of guests used at said hotel during the period above stated.

And deponent says further that on the third page of said register of guests, under date of July 8th, 1913 (Contd 7/8/13), on the second line from the top, is the signature of A. H. Henslee, address "Atlanta, U. S. A., assigned to room 79 in said hotel; and deponent says further that he was the clerk on duty at said hotel at the time the said Henslee registered his said name on said register, and was a guest at said hotel during that day; and deponent says further that he is personally acquainted with the said Henslee.

And deponent says further that he is aware and has knowledge that this affidavit is to be used as evidence in the hearing of the motion for a new trial in the case of the State of Georgia versus Leo M. Frank, which is now pending in the superior court of Fulton County, Georgia.

W. M. LITTLE.

Sworn to and subscribed before me
this October 23rd, 1913.
H. K. GAMMON, J. P.,
Muscogee County, Ga.

EXHIBIT KK.

State of Georgia, Fulton County.

State of Georgia,
vs.
Leo. M. Frank. } No..... Murder. Fulton Superior Court.

Personally appears Leo M. Frank, who on oath deposes and states that he is the defendant above named; that he did not know nor has he ever heard, until the end of his trial in the above stated case, that A. H. Henslee and Marcellus Johenning had any prejudice or bias against deponent nor that they or either of them had ever said or done anything indicating that they believed in deponent's guilt, or had any prejudice or bias against deponent.

LEO M. FRANK.

Sworn to and subscribed before me
this 24th of October, 1913.
J. O. KNIGHT,
Notary Public, Fulton County, Georgia.

EXHIBIT LL.

Georgia, Fulton County.

State of Georgia,
vs.
Leo. M. Frank.
} In the Superior Court of Fulton County, Georgia.

To the Honorable George L. Bell,
Judge of the Fulton Superior Court:

This application is presented to the Court by Leo M. Frank, the defendant in the above stated case, and shows to the Court the following facts:

The above stated case of the State of Georgia vs. Leo M. Frank, indictment for murder, has been tried, a verdict found, and this defendant sentenced; and a motion for a new trial in said case is now pending before Honorable L. S. Roan, Judge of the Stone Mountain Circuit, and hearing set for October 4, 1913.

It is shown to this Court that there is a certain party in the City of Atlanta, one C. P. Stough, whose affidavit is desired by this defendant to be used as evidence on the motion for new trial, and that said C. P. Stough refuses to give said affidavit; and it is desired to take testimony of said C. P. Stough under Section 5918 of the Code of 1910 of the State of Georgia.

Wherefore, the premises considered, this application is made for the purpose of having this Court name a Commissioner to take said testimony and for the purpose of having subpoenas issued as provided in said section of the Code, requiring said C. P. Stough to be and appear before said Commissioner at a date and place named, to answer certain questions to be propounded to him by Counsel for said defendant.

This September 29th, 1913.

R. R. ARNOLD,
L. Z. ROSSER,
Defendants' Attorneys.

The foregoing application read and considered. It is ordered that Sig Teitlebaum act as commissioner in said case, in accordance with Section 5918 of the Code of Georgia of 1910.

This September 29th, 1913.

GEO. L. BELL,
Judge of Superior Court,
Atlanta Circuit.

EXHIBIT LL—(Continued).

Georgia, Fulton County.

State of Georgia,
vs.
Leo. M. Frank.
} In Fulton Superior Court.

Written questions to be propounded to C. P. Stough, a witness for the defendant in the motion for new trial pending in said case, set for hearing October 4, 1913, before Judge L. S. Roan, Judge of the Stone Mountain Circuit.

1. Q. Do you know A. H. Henslee, who served on the jury in the above stated case at the trial commencing July 28, 1913?
   A. Yes.
2. Q. How long have you known him?
   A. About 6 or 7 years.

3. Q. During the time between the murder of Mary Phagan, as reported in the newspapers, to-wit: on April 26, 1913, and the commencement of the trial of the above case, what statements, if any, did you hear juror Henslee make in connection with Leo M. Frank, or as to who murdered Mary Phagan, or as to who was guilty of this murder; or as to how the trial of Leo M. Frank for this murder would terminate.

A. About the time that Conley was reported to have made a statement, I was coming into the city on a street car from the home of my daughter. Henslee was also on the car. I heard him say this, in reference to Leo M. Frank's guilt of the murder of Mary Phagan: "I think he is guilty and I would like to be in a position where I could help break his damned neck."

4. Q. How were these statements made?

A. This statement was most positive. He was as positive as I was, and I was as positive as I could be in what I said in the conversation.

5. Q. When and where was this?

A. On a College Park street car, coming into the city.

6. Q. What is your business?

A. Inspector for the Mason's Annuity.

C. P. STOUGH.

Georgia, Fulton County.

Personally appeareed C. P. Stough, who having been duly sworn made answer as above indicated and shown, to the foregoing written questions 1-6 inclusive; said answers executed, sworn to and subscribed before me this September 29th, 1913.

SIG TEITLEBAUM,
Notary Public Fulton County, Georgia, and Commissioner to Take Testimony.

EXHIBIT MM.

Georgia, Hancock County.

State of Georgia,
vs.
Leo M. Frank.
} In Superior Court of Fulton County, Georgia.

To the Honorable Clerk of the Superior Court of Hancock County, Ga.

This application shows the following facts:

Heretofore, a verdict of guilty was returned in said case, judgment was passed by the Court, and a motion for new trial was filed in said case, which said motion for new trial is set for hearing on October 4th, 1913, before Judge L. S. Roan, Judge of the Stone Mountain Circuit.

It is shown that there are three parties who reside in Sparta, Hancock County, Georgia, to-wit: John M. Holmes, Esq., Shi Gray, Esq., and S. M. Johnson, Esq., whose affidavits are desired by the movant as evidence on said motion; and further that all three of said parties have refused to give said affidavits.

Wherefore, this application is made to the Clerk, as provided by Sections 5918-19 of the Civil Code of 1910, State of Georgia, that subpoenas may be issued addressed to each of said parties, requiring them to be and appear before J. W. Lewis, Esq., a notary public of said Hancock County, Georgia, and answer under oath such written questions as are hereto annexed and such further written questions as may be propounded upon the hearing, in lieu of making said affidavit.

R. R. ARNOLD,
L. Z. ROSSER,
Attorneys for Leo. M. Frank, Movant.

EXHIBIT MM—(Continued).

Georgia, Hancock County.

State of Georgia,
vs.
Leo. M. Frank. } In Superior Court of Fulton County, Georgia.

Questions to be propounded to Shi Gray, of Sparta, Hancock County, Georgia.

1. Q. Have you examined clipping from the Atlanta Georgian of August 26, 1913, hereto attached, showing a picture of the jury in the above-stated case, and showing a likeness of Juror A. H. Henslee?
   A. Yes.
2. Q. Are you personally acquainted with A. H. Henslee?
   A. Yes.
3. Q. Did you or not hear A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan?
   A. Yes.
4. Q. To the best of your recollection what did he say in this conversation?
   A. In a conversation in Walker & Holmes Insurance office, some one asked Henslee whether he, Henslee, thought Frank was guilty of the murder of Mary Phagan. Henslee answered in the affirmative. The answer given by Henslee was stated positively and firmly. The conversation lasted for about 20 minutes to half an hour. All of us were talking, Henslee and Mr. Holmes and Mr. Johnson, and others. The whole conversation at the time with Henslee was on the proposition as to whether or not Leo M. Frank was guilty of the murder of Mary Phagan.
5. Q. Where and when did this take place, and who else was present?
   A. It was before the trial of Frank, and it was in the insurance office of Walker & Holmes.
6. Q. Did you not hear A. H. Henslee state, in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan?
   A. Yes.
7. Q. Did you not hear A. H. Henslee say that he believed Leo M. Frank was guilty of the murder of Mary Phagan, and further that he would bet one dollar or other sum, or would like to bet one dollar or other sum, that he, the said A. H. Henslee, would be put on the jury to try Leo M. Frank for the murder of Mary Phagan?
   A. I heard him say he was summoned as a juror in the same conversation already testified about.
8. Q. State in full what is your business occupation, or if more than one, what are your business occupations?
   A. I am a dealer in live stock.

H. SHI GRAY.

Georgia, Hancock County.

Before me personally appeared H. Shi Gray, who being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth; said answers executed, sworn to, and subscribed before me this September 26, 1913.

J. W. LEWIS,
Notary Public, Hancock County, Georgia.

EXHIBIT MM—(Continued).

Georgia, Hancock County.

State of Georgia,
vs.
Leo. M. Frank.
} In Superior Court of Fulton County, Georgia.

Questions to be propounded to T. M. Johnson, of Sparta, Hancock County, Georgia.

1. Q. Have you examined clipping from the Atlanta Georgian of August 26, 1913, hereto attached, showing a picture of the jury in the above-stated case, and showing a likeness of Juror A. H. Henslee?
   A. Yes.
2. Q. Are you personally acquainted with A. H. Henslee?
   A. I know him by sight.
3. Q. Did you or not hear A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan?
   A. Yes.
4. Q. To the best of your recollection what did he say in this conversation?
   A. Several parties were talking. Some said they thought Leo M. Frank was guilty of the murder of Mary Phagan, others said they did not. Henslee stated his conviction that Frank was guilty of the murder of Mary Phagan. He did this firmly and positively.
5. Q. Where and when did this take place, and who else was present?
   A. Walker & Holmes office, about the last of June, 1913.
6. Q. Did you not hear A. H. Henslee state, in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan?
   A. Yes.
7. Q. Did you not hear A. H. Henslee say that he believed Leo M. Frank was guilty of the murder of Mary Phagan, and further that he would bet one dollar or other sum, or would like to bet one dollar or other sum, that he, the said A. H. Henslee, would be put on the jury to try Leo M. Frank for the murder of Mary Phagan?
   A. He said he had been drawn as a juror and might have to serve.
8. Q. State in full what is your business occupation, or if more than one, what are your business occupations?
   A. Work for Walker & Holmes.

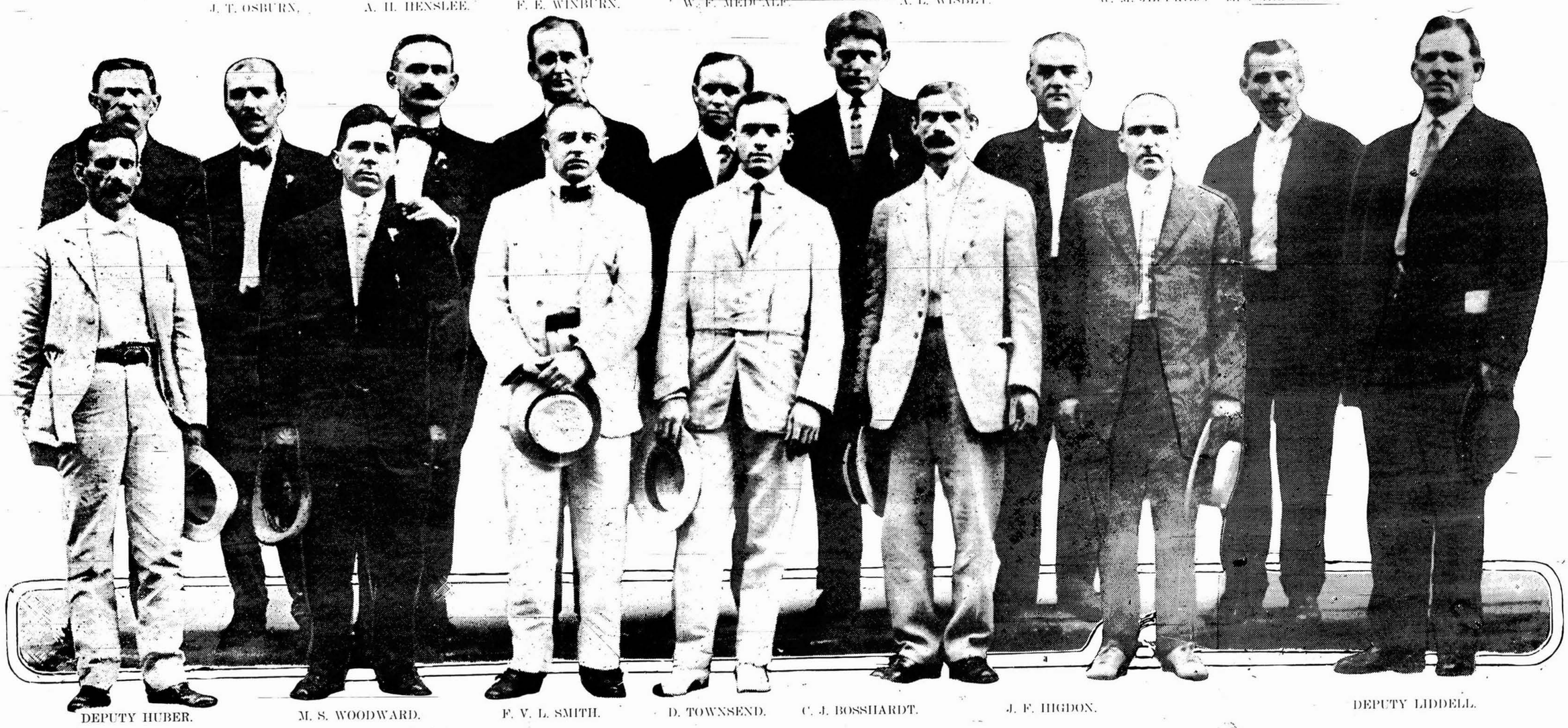
T. M. JOHNSON.

Georgia, Hancock County.

Before me personally appeared T. M. Johnson, who being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth, said answers executed, sworn to and subscribed before me this September 26, 1913.

J. W. LEWIS,
Notary Public, Hancock County, Ga.

JURY THAT CONVICTED FRANK AS SLAYER OF MARY PHAGAN



J. T. OSBURN. A. H. HENSLEE. F. E. WINBURN. W. F. MEDCALF. A. L. WISBEY. W. M. JEFFRIES. M. JOHENNING.

DEPUTY HUBER. M. S. WOODWARD. F. V. L. SMITH. D. TOWNSEND. C. J. BOSSHARDT. J. F. HIGDON. DEPUTY LIDDELL.

EXHIBIT MM—(Continued).

Georgia, Hancock County.

State of Georgia,
vs.
Leo. M. Frank. } In Superior Court of Fulton County, Georgia.

Questions to be propounded to John M. Holmes, of Sparta, Hancock County, Georgia.

1. Q. Have you examined clipping from the Atlanta Georgian of August 26, 1913, hereto attached, showing a picture of the jury in the above-stated case, and showing a likeness of Juror A. H. Henslee?
   A. Yes.
2. Q. Are you personally acquainted with A. H. Henslee?
   A. Yes.
3. Q. Did you or not hear A. H. Henslee discussing the question of whether or not Leo M. Frank was guilty of the murder of Mary Phagan, between the death of said Mary Phagan and the commencement of the trial of Leo M. Frank charged with the murder of Mary Phagan?
   A. Yes.
4. Q. To the best of your recollection what did he say in this conversation?
   A. Several men were in my office. Mr. Henslee was asked the question whether or not he believed Leo M. Frank was guilty of the murder of Mary Phagan. He stated that he did. He stated this positively and firmly.
5. Q. Where and when did this take place, and who else was present?
   A. Walker & Holmes insurance office on the morning of June 27th, 1913.
6. Q. Did you not hear A. H. Henslee state, in Sparta, Ga., between the time of the death of Mary Phagan and the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, that Leo M. Frank was guilty of the murder of Mary Phagan?
   A. Yes.
7. Q. Did you not hear A. H. Henslee say that he believed Leo M. Frank was guilty of the murder of Mary Phagan, and further that he would bet one dollar or other sum, or would like to bet one dollar or other sum, that he, the said A. H. Henslee, would be put on the jury to try Leo M. Frank for the murder of Mary Phagan?
   A. He stated that he had been summoned as a juror.
8. Q. State in full what is your business occupation, or if more than one, what are your business occupations?
   A. Member of the firm of Walker & Holmes, real estate and insurance.

JOHN M. HOLMES.

Georgia, Hancock County.

Before me personally appeared John M. Holmes, who being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth; said answers executed, sworn to, and subscribed before me this September 26, 1913.

J. W. LEWIS,
Notary Public, Hancock County, Ga.

EXHIBIT NN.

Georgia, Fulton County.

State of Georgia,
vs.
Leo M. Frank. } In Superior Court of Fulton County.

To the Honorable Clerk of the Superior Court of Walton County, Ga.

This application shows the following facts:

Heretofore, a verdict of guilty was returned in said case, judgment was passed by the Court, and a motion for new trial was filed in said case, which said motion for new trial is set for hearing on October 4th, 1913, before Judge L. S. Roan, Judge of the Stone Mountain Circuit.

It is shown that there are three parties who reside in Monroe, Walton County, Georgia, to-wit: J. J. Nunnally, Esq., Virgil Harris, Esq., and W. L. Ricker, Esq., whose affidavits are desired by the movant as evidence on said motion and further that all three of said parties have refused to give said affidavits.

Wherefore, this application is made to the clerk, as provided by Sections 5918-19 of the Civil Code of 1910, State of Georgia, that subpoenas may be issued addressed to each of said parties, requiring them to be and appear before Orrin Roberts or Clifford Walker, notary publics of said Walton County, Ga., and answer under oath such written questions as are hereto annexed and such further written questions as may be propounded upon the hearing, in lieu of making said affidavit.

R. R. ARNOLD,
L. Z. ROSSER,
Attorneys for Leo M. Frank, Movant.

Georgia, Walton County.

State of Georgia,
vs.
Leo M. Frank. } In the Superior Court of Fulton County, Georgia.

Written questions to be propounded to J. J. Nunnally, Esq., W. L. Ricker, Esq., Virgil Harris, Esq., and ———, residence Monroe, Walton County, Georgia.

1. Q. Have you examined the attached clipping from the Atlanta Georgian of August 23, 1913, and particularly the likeness in said clipping of A. H. Henslee?
   A. Yes, I have.
2. Q. Do you know A. H. Henslee?
   A. I do.
3. Q. Do you recall whether or not A. H. Henslee was in Monroe, Georgia, between the time of the murder of Mary Phagan, as reported in the papers, and the time of the commencement of the trial of Leo M. Frank for the murder of Mary Phagan, to-wit, July 28, 1913?
   A. He was.
4. Q. Did you hear A. H. Henslee make any statements in connection with the guilt of Leo M. Frank of the murder of Mary Phagan, and if so, what were those statements?
   A. I did. He talked for some time in the store of Nunnally & Harris, and stated that Leo M. Frank was guilty of the murder of Mary

Phagan. He denounced Frank bitterly and vehemently and made this statement about Frank in my hearing: "They are going to break that Jew's neck." This was stated most bitterly and positively.

5. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, make any statements as to what he believed about the guilt of Leo M. Frank of the murder of Mary Phagan; if so, what were those statements?

A. Yes, he said that Frank was guilty.

6. Q. Did A. H. Henslee, in Monroe, Georgia, between said dates, in your presence, and hearing, say he thought Leo M. Frank was guilty of the murder of Mary Phagan; if so, did he state it positively and firmly; how did he make the statement? Give his language as well as you recollect it; if you do not recollect his language, what was the tenor of it?

A. Yes; he was bitter.

7. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, say anything about what the jury that tried Leo M. Frank for the murder of Mary Phagan would do if that jury did its duty; if so, what did he say, giving his language as nearly as you can recollect it, and if you can not recall the exact language, state the tenor and effect of said language.

8. Q. How long did A. H. Henslee discuss the guilt of Leo M. Frank in Monroe, Georgia, between said dates, and how many times did he repeat the statement that he thought Frank was guilty, in your hearing?

A. I was only present about 20 minutes. He was talking all the time I was there and stating that Frank was guilty of the murder of Mary Phagan.

9. Q. At the time you heard the statements above answered or referred to, who else was present and who else heard these statements, if you know?

A. J. J. Nunnally and some others whose names I do not now recall.

10. Q. State in full what is your business occupation, or occupations.

A. Dentist. Practicing about seven years. Am graduate of Atlanta Dental College.

W. L. RICKER.

Georgia, Walton County.

Before me personally appeared W. L. Ricker, who being first duly sworn true answers to make to the above and foregoing questions, answered same as above set forth; said answer executed, sworn to and subscribed before me this September 27, 1913.

CLIFFORD WALKER,
Notary Public, Walton County, Ga.

EXHIBIT NN—(Continued).

Georgia, Walton County.

State of Georgia,
vs.
Leo M. Frank. } In the Superior Court of Fulton County, Georgia.

Written questions to be propounded to J. J. Nunnally, Esq., W. L. Ricker, Esq., Virgil Harris, Esq., and ——, residence Monroe, Walton County, Georgia.

1. Q. Have you examined the attached clipping from the Atlanta Georgian of August 23, 1913, and particularly the likeness in said clipping of A. H. Henslee?

   A. Yes.

2. Q. Do you know A. H. Henslee?

   A. Yes.

3. Q. Do you recall whether or not A. H. Henslee was in Monroe, Georgia, between the time of the murder of Mary Phagan, as reported in the papers, and the time of the commencement of the trial of Leo M. Frank for the murder of Mary Phagan: to-wit—July 28, 1913.

   A. He was.

4. Q. Did you hear A. H. Henslee make any statements in connection with the guilt of Leo M. Frank of the murder of Mary Phagan, and if so, what were those statements?

   A. What impressed me was that Henslee was the most vehement in his expressions as to the guilt of Leo M. Frank of the murder of Mary Phagan, of any person I had heard talk about it. The Phagan murder was, at the time, the particular topic of conversation generally; a great many people were discussing it, and many men denouncing Frank as guilty, particularly traveling men. Henslee was the most bitter of any. For about two and one-half hours in my place of business Henslee argued Frank's guilt in the murder case; in talking about the outcome of the case, he made the statement, which to the best of my recollection was, that if the jury should turn Frank out, he (Frank) would not get out of Atlanta alive.

5. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, make any statements as to what he believed about the guilt of Leo M. Frank of the murder of Mary Phagan; if so, what were those statements?

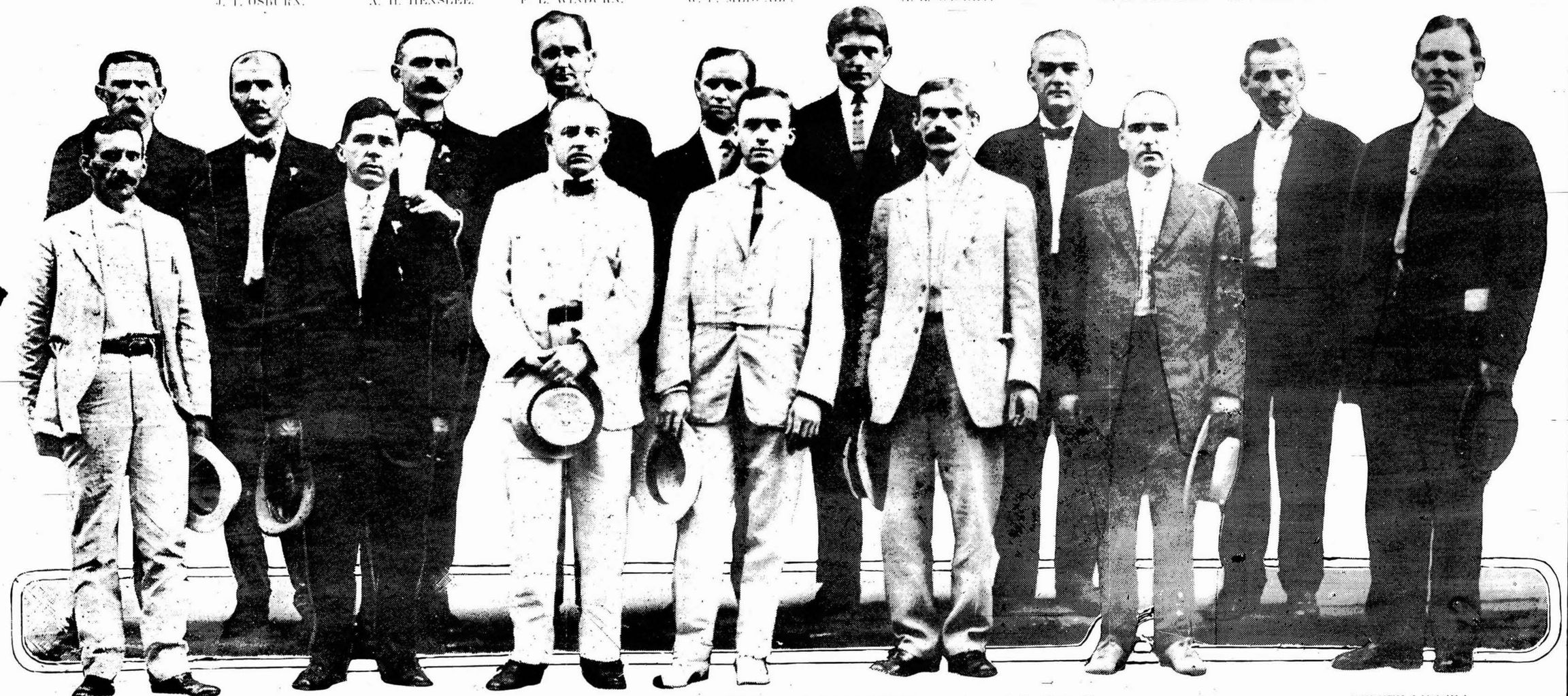
   A. Yes, he believed him guilty.

6. Q. Did A. H. Henslee, in Monroe, Georgia, between said dates, in your presence, and hearing, say he thought Leo M. Frank was guilty of the murder of Mary Phagan; if so, did he state it positively and firmly; how did he make the statement? Give his language as well as you recollect it; if you do not recollect his language, what was the tenor of it?

   A. He was very vehement as stated; there was no doubt from what he said that it was his conviction that Frank was guilty.

7. Q. Did you hear A. H. Henslee, in Monroe, Georgia, between said dates, say anything about what the jury that tried Leo M. Frank for the murder of Mary Phagan would do if that jury did its duty; if so,

JURY THAT CONVICTED FRANK AS SLAYER OF MARY PHAGAN



J. T. OSBURN. A. H. HENSLEE. F. E. WINBURN. W. F. MEDCALF. A. L. WISBEY. W. M. JEFFRIES. M. JOHENNING.

DEPUTY HUBER. M. S. WOODWARD. F. V. L. SMITH. D. TOWNSEND. C. J. BOSSHARDT. J. F. HIGDON. DEPUTY LIDDELL.

what did he say, giving his language as nearly as you can recollect it, and if you can not recall the exact language, state the tenor and effect of said language.

A. I only recall that, to the best of my recolection, he said that if the jury did turn Frank aloose, Frank would never get away alive.

8. Q. How long did A. H. Henslee discuss the guilt of Leo M. Frank in Monroe, Georgia, between said dates, and how many times did he repeat the statement that he thought Frank was guilty, in your hearing?

A. About two and one-half hours, according to my recollection. He made the statements repeatedly; it might have been only two hours.

9. Q. At the time you heard the statements above answered or referred to, who else was present and who else heard these statements, if you know?

A. Dr. W. L. Ricker, and at times during the period there were others, but their names I don't recall. My partner, Mr. Harris, was out of the city.

10. Q. State in full what is your business occupation, or occupations.

A. A member of the firm of Nunnally & Harris, composed of J. J. Nunnally and Virgil Harris, dealers in buggies, wagons, and live stock. Also vice-president W. H. Nunnally Co., general supplies and merchandise.

J. J. NUNNALLY.

Georgia, Walton County.

Before me personally appeared J. J. Nunnally, who, being first duly sworn true answers to make to the above and foregoing written questions, answered same as above set forth; said answers executed, sworn to and subscribed before me this September 27, 1913.

CLIFFORD WALKER,
Notary Public, Walton County, Ga.

The recitals of fact contained in the original motion for new trial, and in the one hundred and three grounds of the foregoing amended motion for new trial (the same being all the grounds of said original and all the grounds of said amended motion) are hereby approved as true, and the Court has identified all the exhibits and they are made part of said motion for new trial.

October 31, 1913.

L. S. ROAN,
J. S. C., St. Mt. Ct.

After considering the above and foregoing motion and amended motion and affidavits submitted by the State the motion for a new trial is hereby overruled and denied.

This October 31, 1913.

L. S. ROAN,
Judge Superior Court, Stone Mountain Circuit, Presiding.

Recorded Writs M. G. page 796,
31st October, 1913.

JOHN H. JONES, Deputy Clerk.

CHARGE OF THE COURT.

State of Georgia, } Murder.
vs. } Fulton Superior Court.
Leo M. Frank. } Trial: July 28 to Aug. 21, 1913.

Gentlemen of the Jury:

This bill of indictment charges Leo M. Frank with the offense of murder. The charge is that Leo M. Frank, in this county, on the 26th day of April, of this year, with force and arms, did unlawfully and with malice aforethought kill and murder one Mary Phagan by then and there choking her, the said Mary Phagan, with a cord placed around her neck.

To this charge made by the bill of indictment found by the grand jury of this county recently empanelled Leo M. Frank, the defendant, files a plea of not guilty. The charge as made by the bill of indictment on the one hand and his plea of not guilty filed thereto form the issue, and you, gentlemen of the jury, have been selected, chosen and sworn to try the truth of this issue.

Leo M. Frank, the defendant, commences the trial with the presumption of innocence in his favor, and this presumption of innocence remains with him to shield him and protect him until the State shall overcome it and remove it by evidence offered to you, in your hearing and presence, sufficient in its strength and character to satisfy your minds beyond a reasonable doubt of his guilt of each and every material allegation made by the bill of indictment. I charge you, gentlemen, that all of the allegations of this indictment are material and it is necessary for the State to satisfy you of their truth by evidence that convinces your minds beyond a reasonable doubt of his guilt before you would be authorized to find a verdict of guilty. You are not compelled to find, from the evidence, his guilt beyond any doubt, but beyond a reasonable doubt, such a doubt as grows out of the evidence in the case, or for want of evidence, such a doubt as a reasonable and impartial mind would entertain about matters of the highest importance to himself after all reasonable efforts to ascertain the truth. This does not mean a fanciful doubt, one conjured up by the jury, but a reasonable doubt.

Gentlemen, this defendant is charged with murder. Murder is defined to be the unlawful killing of a human being, in the peace of the State, by a person of sound memory and discretion, with malice aforethought, either express or implied.

Express malice is that deliberate intention unlawfully to take away the life of a fellow-being, which is manifested by external circumstances capable of proof.

Malice shall be implied where no considerable provocation appears, and where all of the circumstances of the killing show an abandoned and malignant heart.

There is no difference between express and implied malice except in the mode of arriving at the fact of its existence. The legal sense of the term "malice" is not confined to particular animosity to the deceased, but extends to an evil design in general. The popular idea of malice in its sense of revenge, hatred, ill will, has nothing to do with the subject. It is an intent to kill a human being in a case where the law would neither justify nor in any degree excuse the intention, if the killing should take place as intended. It is a deliberate intent unlawfully to take human life, whether it springs from hatred, ill will or revenge, ambition, avarice or other like passion. A man may form the intent to kill, do the killing instantly, and regret the deed as soon as done. Malice must exist at the time of the killing. It need not have existed any length of time previously.

When a homicide is proven, if it is proven to be the act of the defendant, the law presumes malice, and unless the evidence should relieve the slayer he may be found guilty of murder. The presumption of innocence is removed by proof of the killing by the defendant. When the killing is shown to be the act of the defendant, it is then on the defendant to justify or mitigate the homicide. The proof to do that may come from either side, either from the evidence offered by the State to make out its case, or from the evidence offered by the defendant or the defendant's statement.

Gentlemen of the jury, you are made by law the sole judges of the credibility of the witnesses and the weight of the testimony of each and every witness. It is for you to take this testimony as you have heard it, in connection with the defendant's statement, and arrive at what you believe to be the truth.

Gentlemen, the object of all legal investigation is the discovery of truth. That is the reason of you being selected, empanelled and sworn in this case—to discover what is the truth on this issue formed on this bill of indictment. Is Leo M. Frank guilty? Are you satisfied of that beyond a reasonable doubt from the evidence in this case? Or is his plea of not guilty the truth? The rules of evidence are framed with a view to this prominent end—seeking always for pure sources and the highest evidence.

Direct evidence is that which immediately points to the question at issue. Indirect or circumstantial evidence is that which only tends to establish the issue by proof of various facts sustaining, by their consistency, the hypothesis claimed. To warrant a conviction on circumstantial evidence, the proven facts must not only be consistent with the hypothesis of guilt, but must exclude every other reasonable hypothesis save that of the guilt of the accused.

The defendant has introduced testimony as to his good character. On this subject, I charge you that evidence of good character when offered by the defendant in a criminal case is always relevant and material, and should be considered by the jury, along with all the other evidence introduced, as one of the facts of the case. It should be considered by the jury, not merely where the balance of the testimony in the case makes it doubtful whether the defendant is guilty or not, but also where such evidence of good character may of itself generate a doubt as to the defendant's guilt. Good character is a substantial fact, like any other fact tending to establish the defendant's innocence, and ought to be so regarded by the jury. Like all other facts proved in the case, it should be weighed and estimated by the jury, for it may render that doubtful which would otherwise be clear. However, if the guilt of the accused is plainly proved to the satisfaction of the jury beyond a reasonable doubt, notwithstanding the proof of good character, it is their duty to convict. But the jury may consider the good character of the defendant, whether the rest of the testimony leaves the question of his guilt doubtful or not, and if a consideration of the proof of his good character, considered along with the evidence, creates a reasonable doubt in the minds of the jury as to the defendant's guilt, then it would be the duty of the jury to give the defendant the benefit of the doubt thus raised by his good character, and to acquit him. (Stephens case, 81 Ga. 589).

The word "character" as used in this connection, means that general reputation which he bore among the people who knew him prior to the time of the death of Mary Phagan. Therefore, when the witnesses by which a defendant seeks to prove his good character are put upon the stand, and testify that his character is good, the effect of the testimony is to say that the people who knew him spoke well of him, and that his general reputation was otherwise good. When a defendant has put his character in issue, the State is

allowed to attack it by proving that his general reputation is not good, or by showing that the witnesses who have stated that his character is good, have untruly reported it. Hence, the Solicitor-General has been allowed to cross-examine the witnesses for the defense who were introduced to testify to his good character. In the cross examination of these witnesses, he was allowed to ask them if they had not heard of various acts of misconduct on the defendant's part. The Solicitor-General had the right to ask any questions along this line he pleased, in order thoroughly to sift the witnesses, and to see if anything derogatory to the defendant's reputation could be proved by them. The Court now wishes to caution you that, although the Solicitor-General was allowed to ask the defendant's character witnesses these questions as to their having heard of various acts of alleged misconduct on the defendant's part, the jury is not to consider this as evidence that the defendant has been guilty of any such misconduct as may have been indicated in the questions of the Solicitor-General, or any of them, unless the alleged witnesses testify to it. Furthermore, where a man's character is put in evidence, and in the course of the investigation any specific act of misconduct is shown, this does not go before the jury for the purpose of showing affirmatively that his character is bad or that he is guilty of the offense with which he stands charged, but is to be considered by the jury only in determining the credibility and the degree of information possessed by those witnesses who have testified to his good character. (Henderson's case, 5 Ga. App. 495 (3)).

When the defendant has put his character in issue, the State is allowed to bring witnesses to prove that his general character is bad, and thereby to disprove the testimony of those who have stated that it is good. The jury is allowed to take this testimony, and have the right to consider it along with all the other evidence introduced on the subject of the general character of the defendant, and it is for the jury finally to determine from all the evidence whether his character was good or bad. But a defendant is not to be convicted of the crime with which he stands charged, even though, upon a consideration of all the evidence, as to his character, the jury believes that his character is bad, unless from all the other testimony in the case they believe he is guilty beyond a reasonable doubt.

You will, therefore, observe that this is the rule you will be guided by in determining the effect to be given to the evidence on the subject of the defendant's character: If, after considering all the evidence pro and con, on the subject of the defendant's character, you believe that prior to the time of Mary Phagan's death he bore a good reputation among those who knew him, that his general character was good, you will consider that as one of the facts in the case, and it may be sufficient to create a reasonable doubt of the defendant's guilt, if it so impress your minds and consciences, after considering it along with all the other evidence in the case; and if it does you should give the defendant the benefit of the doubt and acquit him. However, though you should believe his general character was good, still if, after giving due weight to it as one of the facts in the case, you believe from the evidence as a whole that he is guilty beyond a reasonable doubt, you would be authorized to convict him.

If you believe beyond a reasonable doubt from the evidence in this case that this defendant is guilty of murder, then you would be authorized in that event to say "We, the jury, find the defendant guilty." Should you go no further, gentlemen, and say nothing else in your verdict, the Court would have to sentence the defendant to the extreme penalty for murder, to-wit: to be hanged by the neck until he is dead. But should you see fit to do so, in the event you arrive at the conclusion and belief beyond a reasonable doubt from

the evidence that this defendant is guilty, then, gentlemen, you would be authorized in that event, if you saw fit to do so, to say: "We, the jury, find the defendant guilty, and we recommend that he be imprisoned in the penitentiary for life." In the event you should make such a verdict as that, then the Court, under the law, would have to sentence the defendant to the penitentiary for life.

You have heard the defendant make his statement. He had the right to make it under the law. It is not made under oath and he is not subject to examination or cross-examination. It is with you as to how much of it you will believe, or how little of it. You may go to the extent, if you see fit, of believing it in preference to the sworn testimony in the case.

In the event, gentlemen, you have a reasonable doubt from the evidence, or the evidence and the statement together, or either as to the defendant's guilt as charged, then give the prisoner the benefit of that doubt, and acquit him; and in the event you do acquit him the form of your verdict would be: "We, the jury, find the defendant not guilty." As honest jurors do your utmost to reach the truth from the evidence and statement as you have heard it here, then let your verdict speak it.

Examined and approved as my charge in this case, Nov. 1, 1913.

(Signed) L. S. ROAN,
J. S. C., St. Mt. Ct.

000987

In the Supreme Court of Georgia

FALL TERM, 1913

LEO M. FRANK,
PLAINTIFF IN ERROR,

vs.

STATE OF GEORGIA,
DEFENDANT IN ERROR

In Error from Fulton Superior Court
at the July Term, 1913

BRIEF OF THE EVIDENCE

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In the Supreme Court of Georgia

OCTOBER TERM, 1913

LEO M. FRANK,
Plaintiff in Error
VS.
STATE OF GEORGIA,
Defendant in Error
} From Fulton Superior Court.

BRIEF OF THE EVIDENCE.

MRS. J. W. COLEMAN, sworn for the State.

I am Mary Phagan's mother. I last saw her alive on the 26th day of April, 1913, about a quarter to twelve, at home, at 146 Lindsey Street. She was getting ready to go to the pencil factory to get her pay envelope. About 11:30 she ate some cabbage and bread. She left home at a quarter to twelve. She would have been fourteen years old the first day of June, was fair complected, heavy set, very pretty, and was extra large for her age. She had on a lavender dress, trimmed in lace, and a blue hat. She had dimples in her cheeks.

CROSS EXAMINATION.

The blue hat that is seen here is the hat the little girl had on that day. It had some pale blue ribbon and some flowers when she left home. It was a small bunch of little pink flowers right in the center. We live two blocks from the street car line. There is a store there, at the place she usually gets on the car, kept by Mrs. Smith. Epps is a neighbor of ours. He was a friend of Mary's. He wasn't no special friend of hers.

RE-DIRECT EXAMINATION.

These are the clothes that she wore on the day (State's Exhibit "M".)

GEORGE EPPS, sworn for the State.

I am fourteen years old. I live right around the corner from Mary Phagan's home. I have known her about a year. The last time I saw her was Saturday morning coming to town on the English Avenue car. It was about ten minutes to twelve when I first saw her. I left her about seven minutes after twelve at the corner of Forsyth and Marietta Street. She had on that hat, parasol and things when I left her. She was going to the pencil factory to draw her money. She said she was going to see the parade at Elkin-Watson's at two o'clock. She never showed up. I stayed around there until four o'clock and then I went to the ball game. When I left her at the corner of Forsyth and Marietta, I went under the bridge to get papers and she went over the bridge to the pencil factory, about two blocks down Forsyth Street. I sat with Mary on the car.

CROSS EXAMINATION.

I know what time it was when I met Mary because I looked at Bryant and Keheley's clock at the corner of Oliver and Bellwood, where I caught the car. She caught the car at Oliver and Lindsey and I caught the car at Oliver and Bell Street. She got on before I did, just one block before. I didn't say anything before the Coroner's jury about seeing a clock there, but I did see one. I know it was about seven minutes after twelve when I got off at Marietta Street because I can tell by the sun. I lived in the country and when I got off I looked at the sun. Mary got off the street car with me. No, she didn't ride on to Hunter Street. I am sure of that. She walked on down to the pencil factory on the right-hand side of Forsyth Street.

NEWT LEE (colored), sworn for the State.

On the 26th day of April, 1913, I was night watchman at the National Pencil Factory. I had been night watchman there for about three weeks. When I began working there, Mr. Frank carried me around and showed me everything that I would have to do. I would have to get there at six o'clock on week days, and on Saturday evenings I have to come at five o'clock. On Friday, the 25th of April, he told me "To-morrow is a holiday and I want you to come back at four o'clock." "I want to get off a little earlier than I have been getting off." I got to the factory on Saturday about three or four minutes before four. The front door was not locked. I pushed it open, went on in and got to the double door there. I was paid off Friday night at six o'clock. It was put out that everybody would be paid off then. Every Saturday when I get off he gives me the keys at twelve o'clock, so that if he happened to be gone when I get back there at five or six o'clock I could get in, and every Monday morning I return the keys to him. The front door has always been unlocked on previous Saturday afternoons. After you go inside and come up about middle ways of the steps, there are some double doors there. It was locked on Saturday when I got there. Have never found it that way before. I took my keys and unlocked it. When I went upstairs I had a sack of bananas and I stood to the left of that desk like I do every Saturday. I says like I always do, "Alright, Mr. Frank," and he come bustling out of his office. He had never done that before. He always called me when he wanted to tell me anything and said "Step here a minute, Newt." This time he came up rubbing his hands and says, "Newt, I am sorry I had you come so soon, you could have been at home sleeping, I tell you what you do, you go out in town and have a good time." He had never let me off before that. I could have laid down there in the shipping room and gone to sleep, and I told him that. He says, "You needs to have a good time. You go down town, stay an hour and a half and come back your usual time at six o'clock. Be sure and be back at six o'clock." I then went out the door and stayed until about four minutes to six. When I came back the doors were unlocked just as I left them

and I went and says, "Alright, Mr. Frank," and he says, "What time is it?" and I says, "It lacks two minutes of six." He says, "Don't punch yet, there is a few worked to-day and I want to change the slip." It took him twice as long this time than it did the other times I saw him fix it. He fumbled putting it in, while I held the lever for him and I think he made some remark about he was not used to putting it in. When Mr. Frank put the tape in I punched and I went on down-stairs. While I was down there Mr. Gantt came from across the street from the beer saloon and says "Newt, I got a pair of old shoes that I want to get upstairs to have fixed." I says, "I aint allowed to let anybody in here after six o'clock." About that time Mr. Frank come busting out of the door and run into Gantt unexpected and he jumped back frightened. Gantt says, "I got a pair of old shoes upstairs, have you any objection to my getting them?" Frank says, "I don't think they are up there, I think I saw the boy sweep some up in the trash the other day." Mr. Gantt asked him what sort they were and Mr. Frank said "tans." Gantt says, "Well, I had a pair of black ones, too." Frank says, "Well, I don't know," and he dropped his head down just so. Then he raised his head and says, "Newt, go with him and stay with him and help him find them," and I went up there with Mr. Gantt and found them in the shipping room, two pair, the tans and the black ones. Mr. Frank phoned me that night about an hour after he left, it was sometime after seven o'clock. He says "How is everything?" and I says, "Everything is all right so far as I know," and he says, "Good-bye." No, he did not ask anything about Gantt. Yes, that is the first time he ever phoned to me on a Saturday night, or at all.

There is a light on the street floor just after you get in the entrance to the building. The light is right up here where that partition comes across. Mr. Frank told me when I first went there, "Keep that light burning bright, so the officers can see in when they pass by." It wasn't burning that day at all. I lit it at six o'clock myself. On Saturdays I always lit it, but weekdays it would always be lit when I got there. On Saturdays I always got there at five o'clock. This Saturday he got me there an hour earlier and let me off later. There is a light in the basement down there at the foot of the ladder. He told me to keep that burning all the time. It has two little chains to it to turn on and turn off the gas. When I got there on making my rounds at 7 p. m. on the 26th of April, it was burning just as low as you could turn it, like a lightning bug. I left it Saturday morning burning bright. I made my rounds regularly every half hour Saturday night. I punched on the hour and punched on the half and I made all my punches. The elevator doors on the street floor and office floor were closed when I got there on Saturday. They were fastened down just like we fasten them down every other night. When three o'clock came I went down the basement and when I went down and got ready to come back I discovered the body there. I went down to the toilet and when I got through I looked at the dust bin back to the door to see how the door was and it being dark I picked up my lantern and went there and I

saw something laying there which I thought some of the boys had put there to scare me, then I walked a little piece towards it and I seen what it was and I got out of there. I got up the ladder and called up police station. It was after three o'clock. I carried the officers down where I found the body. I tried to get Mr. Frank on the telephone and was still trying when the officers came. I guess I was trying about eight minutes. I saw Mr. Frank Sunday morning at about seven or eight o'clock. He was coming in the office. He looked down on the floor and never spoke to me. He dropped his head right down this way. Mr. Frank was there and didn't say nothing while Mr. Darley was speaking to me. Boots Rogers, Chief Lanford, Darley, Mr. Frank and I were there when they opened the clock. Mr. Frank opened the clock and said the punches were all right, that I hadn't missed any punches. I punched every half hour from six o'clock until three o'clock, which was the last punch I made. I don't know whether they took out that slip or not. On Tuesday night, April 29th at about ten o'clock I had a conversation at the station house with Mr. Frank. They handcuffed me to a chair. They went and got Mr. Frank and brought him in and he sat down next to the door. He dropped his head and looked down. We were all alone. I said, "Mr. Frank, it's mighty hard for me to be handcuffed here for something I don't know anything about." He said, "What's the difference, they have got me locked up and a man guarding me." I said, "Mr. Frank, do you believe I committed that crime," and he said, "No, Newt, I know you didn't, but I believe you know something about it." I said, "Mr. Frank, I don't know a thing about it, no more than finding the body." He said, "We are not talking about that now, we will let that go. If you keep that up we will both go to hell," then the officers both came in. When Mr. Frank came out of his office that Saturday he was looking down and rubbing his hands. I have never seen him rubbing his hands that way before.

CROSS EXAMINATION.

I don't know how many times I told this story before. Everybody was after me all the time down there at the station house. Yes, I testified at the coroner's inquest and I told them there that Mr. Frank jumped back like he was frightened when he saw Mr. Gantt. I am sure I told them, and I told them that Mr. Frank jumped back and held his head down. I didn't say before the coroner that he said he had given one of the pair of shoes of Mr. Gantt to one of the boys; they got that wrong. On Saturdays I had to wake up usually and get to the factory at twelve o'clock. This time Mr. Frank told me to get back at four. I did say before the coroner that he was looking down when he came out of his office. I told them also that there was a place in that building where I could go to sleep, but they didn't ask me where.

When you come in the front door of the factory, you can go right on by the elevator and right down into the basement, anybody could do it. The fact that the double doors on the steps were locked wouldn't prevent anybody from

going in the basement. That would only prevent anybody from up stairs from going into the basement unless they went by the elevator or by unlocking those double doors. All of the doors to the factory were unlocked when I got back there Saturday afternoon about six o'clock, the first floor, the second floor, the third floor and the fourth floor. Anybody could come right in from the street and go all over the factory without Mr. Frank in his office knowing anything about it. The doors are never closed at all. That is a great big, old, rambling place up there. The shutters, the blinds to the factory were all closed that day because it was a holiday, excepting two or three on the first floor which I closed up that night. It's a very dark place when the shutters are closed. That is why we have to burn a light. There is a light on the first floor near the clock, it burns all the time because that is a dark spot. There are two clocks, one punches to a hundred, the other punches to two hundred, because there are more than a hundred employees. I punch both of them. About Mr. Frank and Mr. Gantt, they had had a difficulty and I knew that Mr. Frank didn't want him in there. Mr. Frank had told me "Lee, I have discharged Mr. Gantt, I don't want him in here, keep him out of here," and he had said, "When you see him hanging around here, watch him." That is the reason I thought Mr. Frank was startled when he saw Mr. Gantt. Mr. Gantt is a great big fellow, nearly seven feet. When he went out I watched him as he went to the beer saloon and I went on upstairs. He left the factory about half past six. I went through the machine room every time I made a punch that night. I went to the ladies dressing room every half hour that night until three o'clock. I went all over the building every half hour, excepting the basement. I went down to the basement every hour that night, but not all the way back. Mr. Frank had instructed me to go over the building every half hour and he said go down in the basement once in awhile. He said go back far enough to see the door was closed. He told me to look out for the dust bin because that is where we might have a fire and to see that the back door is shut and to go over all the building every half hour. No, he didn't give me any different instructions on that Saturday, he didn't tell me not to go in the basement or in the metal department. He allowed me to carry out the instructions just like I had been doing before. Yes, if I had gone back to find out whether that door was closed or not, I would have found the body, but I could see if the door was open, because there was a light back there. No, it wasn't open that night. It was shut when I found the body. It was about ten minutes after I telephoned the police that they arrived. When I was down there I was close enough to the door to see it was shut, there was a light in front of it. There was no light between the body and the door. It was dark back there. The body was about sixty feet from that door. If the back door had been open I could have seen that big light back there in the alley. The back door was closed when I found the body. The first time I went down the basement that night was seven o'clock. I went just a little piece beyond the dark, so I could see whether there was any fire down there. That's what I was looking for. Yes, I could tell whether the door was open

from there. No, I didn't go back as far as they found the body, I didn't go back that far at all during the night. The reason I went that far back when I saw the body was because I went to the closet. There are two closets on the second floor, one on the third floor and one on the fourth floor. I didn't see the lady's hat or shoe when I went down to that little place with my lantern, nor the parasol. My lantern was dirty. I was sitting down there, after I had punched, on the seat, set my lantern on the outside. When I got through I picked up my lantern, I walked a few steps down that way, I seed something over there, about that much of the lady's leg and dress. I guess I walked about three or four feet, or five or six. I guess the body was about ten feet from the closet. As to what made me look in that direction from the closet, because I wanted to look that way. I picked up the lantern to go down there to see the dust bin, to see whether there was any fire there. The dust bin was to the right of me. When I was sitting down there the dust bin was not entirely hid behind the partition. I could see where the dust came down. The balance of the night in order to see whether there was any fire in the dust bin or not I went twenty or twenty-five feet from the scuttle hole, and when I was down in the closet I had to go at least ten feet to see whether or not there was any fire in the dust bin. I would have gone further if I hadn't discovered the body. When I saw the body, the closest I ever got to it was about six feet. I was holding my lantern in my hand. I just saw the feet. When I first saw it I was about ten feet from it. As to how far the body was from where I was sitting in the closet, it was not less than ten feet and not more than thirty. I stood and looked at it to see whether or not it was a natural body. When I first got there I didn't think it was a white woman because her face was so dirty and her hair was so crinkled and there were white spots on her face. When the police came back upstairs they said it was a white girl. I think I reported to the police that it was a white woman. She was lying on her back with her face turned kinder to one side. I could see her forehead. I saw a little blood on the side of her head that was turned next to me. The blood was on the right side of her head. I am sure she was lying on her back. Mr. Frank had told me if anything serious happened to call up the police and if anything like fire to call up fire department. I already knew the number of the station house. I did say at the coroner's inquest that it took Mr. Frank longer to put the tape on this time than it did before. I did not say it took twice as long at the coroner's inquest, because they didn't ask me. I didn't pay any attention to him the first time he put the tape on. The reason the last time I know it took him longer because I held the lever and had to move it backwards and forwards. When I was in the basement one of the policemen read the note that they found. They read these words, "The tall, black, slim negro did this, he will try to lay it on the night" and when they got to the word "night" I said "They must be trying to put it off on me." I didn't say, "Boss, that's me."

RE-DIRECT EXAMINATION.

The first time I saw Mr. Frank put any tape on, he didn't say anything about it being any trouble. The last time he put it on, he said something about that he wasn't used to putting it on. I was holding the lever there and he got it on twice and he had put it on wrong and he would have to slip it out and put it back. When Mr. Frank came out rubbing his hands, he came out of his inner office into the outer office and from there in front of the clock. I did not go down in the basement as far as the boiler during the night, except when I discovered the body.

The officers talked to me the whole time. I didn't get to sleep hardly, day or night. Just the time I would get ready to go to sleep, here they was after me. Then I would go back to my cell, stay a while and then another would come and get me. They carried me where I could sleep, but they wouldn't let me stay there long enough to sleep. I didn't get no sleep until I went over to the jail, and I didn't get no sleep at jail for about two weeks. That was before the coroner's inquest, when I was first arrested. When I went back to the jail I was treated nicely. As to who talked to me longer Mr. Frank or Black, Mr. Black did. Mr. Arnold talked to me longer than Mr. Frank did on April 29th. In the southwest corner is some toilets for men and women

L. S. DOBBS, sworn for the State.

I am a sergeant of police. On the morning of April 27th, at about 5:25 a call came from the pencil factory that there was a murder up there. We went down in Boots Rogers' automobile. When we got there the door was locked. We knocked on the door and in about two minutes the negro came down the steps and opened up the door and said there was a woman murdered in the basement. We went through a scuttle hole, a small trapdoor. The negro lead the way back in the basement, to a partition on the left, leading from the elevator. The basement is about twenty feet wide. The negro lead the way back about one hundred fifty feet and we found the body. The girl was lying on her face, not directly lying on her stomach, with the left side on the ground, the right side up just a little. We couldn't tell by looking at her whether she was white or black, only by her golden colored hair. They turned her over and her face was full of dirt and dust. They took a piece of paper and rubbed the dirt off of her face, and we could tell then that it was a white girl. I pulled up her clothes and we could tell by the skin of her knee that she was a white girl. Her face was punctured, full of holes and was swollen and black. She had a cut on the left side of her head as if she had been struck and there was a little blood there. The cord was around her neck, sunk into the flesh. She also had a piece of her underclothing around her neck. The cord was still tight around her neck. The tongue was pro-

truding just the least bit. I began to look around and found a couple of notes. The cord was pulled tight and had cut into the flesh and tied just as tight as it could be. The underclothing around the neck was not tight. There wasn't much blood on her head. It was dry on the outside. I stuck my finger under the hair and it was a little moist. This scratch pad (State's Exhibit "H") was also lying on the ground, close to the body. The body was lying with the head towards Forsyth Street, the head being near the partition. I found the notes under the sawdust, lying near the head. The body was that of Mary Phagan. The scratch pad was lying near the notes. They were all right close together.

(Witness indicates on diagram of the State where body was found and identifies different parts of the building on the diagram. Witness states that diagram is a (State's Exhibit A) fair representation of the parts identified by him, i. e., main floor and stairs, basement, boiler, partition in basement, spot where notes and body were found, and of the entire building.

CROSS EXAMINATION.

We arrived at the factory about 3:30. Lee told us it was a white woman. It took us some time to determine whether it was a white woman or not. We didn't know until the dust was removed from her face and we pulled up the clothes and looked at the skin. We did not know it prior to that time. We had a lantern with us. One of the officers had a flashlight. Both of the notes were near her head. I don't think they were over six or eight inches apart. No, the one written on the scratch pad was not attached to the pad when I found it. It was laying about ten or twelve inches from it, right close together, and about eight or ten inches from her head was the furthest note. I found the white one first, on the white pad. I discovered the notes on the white paper and the scratch pad about the same time. It was possibly five or ten minutes before I found the other. There was a pile of trash near the boiler where this hat was found, and paper and pencils were down there, too. The hat was on the trash pile, so was the shoe. They were right close together on the trash pile. Everything was gone off of it, ribbons and all. It looked like she had been dragged by her feet on her face. I thought I found indications that she had been dragged in the basement, but I couldn't be positive. As to whether Newt Lee could have seen the body from where he was standing I would think that he could have seen the body from where he was standing; I would think that he could have seen the feet and the bulk of the body, he couldn't hardly have seen the head. I don't think he could have seen enough of it to have seen what it was without coming up to it. I made an experiment in the day time to see whether he could see the body or not, and I found he could see the feet, you could see the bulk. Unless he was looking directly for someone. I don't think he could see it. The place where I thought I saw someone dragged was right in front of the elevator, directly back. It began immediately in front of the elevator, right at the bottom of the shaft. The

hat was possibly nearer the elevator than the shoe. That was a dirt floor and cinders on it scattered over the dirt. I thought the places on her face had been made from dragging. I think I saw a little blood on the underclothing. I did not testify before the coroner that the blood ran a little when we moved the body, I didn't say it was liquid. The blood was dry. The little trail where I thought showed the body was dragged went straight on down where the girl was found. It was a continuous trail. The finger joints on her hand worked a little. Back door was shut, staple had been pulled. The lock was locked still, but the staple had been drawn out. It was a sliding door with a bar across the door, but the bar had been taken down. It looked like the staple had been recently drawn. I was reading one of the notes to Lee, with the following words: "A tall black negro did this, he will try to lay it on the night" and when I got to the word "night," Lee says, "That means the night watchman." I had just said the "night" and he said "That means the night watchman." I think the underclothes were torn, not cut, but I am not positive.

RE-DIRECT EXAMINATION.

It was about one hundred fifty feet from the ladder to where we found the body. The ribbon I found was not on the hat, it was on the hair. We made another experiment at night to see whether Newt Lee could have seen the body from where he stood. We placed a bulk about the size of an ordinary body about the same position that this body was found in and you could see the bulk of the body by looking carefully by standing at the spot Newt Lee said he had seen it. A man couldn't get down that ladder with another person. It is a difficult matter for one person to get through the scuttle hole. The signs of dragging that I saw was right at the bottom of the elevator shaft, on the south side of the elevator. The signs of dragging came right around the elevator straight back east of the ladder, it started east of the ladder. A man going down the ladder to the rear of the basement would not go in front of elevator where dragging was. The hasp appeared to have been pulled straight out of the door, on the inside, it was not bent. The body was cold and stiff. Hands folded across the breast. I didn't find any blood on the ground or on the sawdust around where we found the body. Yes, the hasp is bent the least bit. When we got there Sunday morning, I think the elevator was on the second floor. We tried to make Lee run the elevator, but he said he couldn't do it.

FURTHER RE-DIRECT.

I found the handkerchief about ten feet towards the rear beyond the body on a sawdust pile.

RE-CROSS EXAMINATION.

I found it possibly ten or fifteen minutes after we found the body. The handkerchief was bloody just like it is now.

RECALLED FOR THE STATE.

The trap door leading up from the basement was closed when we got there. There were cobwebs and dust back there.

J. N. STARNES, sworn for the State.

I am a city officer. Went to the pencil company's place of business between five and six o'clock, April 27th. The pencil company is located in Fulton County, Georgia. That is where the body was found. The staple to the back door looked as if it had been prized out with a pipe pressed against the wood. There was a pipe there that fitted the indentation on the wood. I called Mr. Frank on the telephone, and told him I wanted him to come to the pencil factory right away. He said he hadn't had any breakfast. He asked where the night watchman was. I told him it was very necessary for him to come and if he would come I would send an automobile for him, and I asked Boots Rogers to go for him. I didn't tell him what had happened, and he didn't ask me. Mr. Frank appeared to be nervous; this was indicated by his manner of speaking to Mr. Darley; he was in a trembling condition. I was guarded with him in my conversation over the phone. About a week afterwards I went to the factory and had the night watchman there, Mr. Hendricks, to show me about the clock. He took a new slip and put it in the clock and punched the slip all the way around in less than five minutes (State's Exhibit P). I got some cord on the second floor of the pencil factory, the knots in those cords are similar to the knots in this cord (State's Exhibit C). On the floor right at the opposite corner, what might be called the northwest corner of the dressing room, on Monday morning, April 28th, I saw splotches that looked like blood about a foot and a half or two feet from the end of the dressing room, some of which I chipped up. It looked like splotches of blood and something had been thrown there and in throwing it had spread out and splattered. There was no great amount of it. I should judge that the area around these spots was a foot and a half. The splotch looked as if something had been swept over it, some white substance. There is a lot of that white stuff in the metal department. It looked like blood. I found a nail fifty feet this side of the metal room toward the elevator on the second floor that looked like it had blood on the top of it. It was between the office and the double doors. I chipped two places off on the back door which looked like they had bloody finger prints. I don't know when Frank was arrested. I don't think he was arrested on Monday. He was asked to come to the station house on Monday. It takes not over three minutes to walk from Marietta Street at the corner of Forsyth across the viaduct and through Forsyth Street down to the pencil factory. Lee was composed at the factory; he never tried to get away. The door to the stairs from the office floor to the third floor was barred when I first went up there.

CROSS EXAMINATION.

I am guessing about the time. It wouldn't take over five minutes to get off the car, walk to the pencil factory, walk in, walk up the stairs and back into Mr. Frank's office. The hasp is bent a little. I heard Boots Rogers testify at the coroner's inquest and I testified twice. I did not correct any statement at the coroner's inquest that Boots Rogers made. I am the prosecutor in this case. I can not give the words of the conversation of the telephone message between myself and Mr. Frank. I could be mistaken as to the very words he used. It was just a casual telephone conversation. I don't know that the splotches that I saw there were blood. The floor at the ladies dressing room is a very dark color. I saw cord like that in the basement, but it was cut up in pieces. I saw a good many cords like that all over the factory. I never found the purse, or the flowers or the ribbon on the little girl's hat. This diagram (State's Exhibit A) is a correct diagram of second floor and basement of pencil company and other places. No. 11 on diagram (State's Exhibit A) is the toilets.

RE-DIRECT EXAMINATION.

I was guarded in what I said over the phone to Mr. Frank though it was just a conversation between two gentlemen. These pieces of wood look like what I chipped off the floor. I turned them over to Chief Lanford. (Referring to State's Exhibit E.)

RECALLED FOR THE STATE.

I saw Mr. Rosser at the coroner's inquest. I never heard him say anything throughout the hearing.

W. W. ROGERS, sworn for the State.

I am now connected with Judge Girardeau's court. I was at the station house Saturday night, April 26th, and went to the National Pencil Company's place of business. It was between five and five thirty that I heard Mr. Starnes have a conversation over the phone. I heard him say, "If you will come I will send an automobile after you." It took us five or six minutes to get out to Mr. Frank's residence at 86 E. Georgia Avenue. Mr. Black was with me. Mrs. Frank opened the door. She wore a heavy bath robe. Mr. Black asked if Mr. Frank was in. Mr. Frank stepped into the hall through the curtain. He was dressed for the street with the exception of his collar, tie, coat and hat. He had on no vest. Mr. Frank asked Mr. Black if anything had happened at the factory. Mr. Black didn't answer. He asked me had anything happened at the factory. I didn't answer. Mr. Frank said, "Did the night watchman call up and report anything to you?" Mr. Black said, "Mr. Frank, you had better get your clothes on and let us go to the factory and see what has happened." Mr. Frank said that he thought he dreamt in the morning

about 3 a. m. about hearing the telephone ring. Mr. Black said something about whiskey to Mrs. Frank in Mr. Frank's presence. Mrs. Frank said Mr. Frank hadn't had any breakfast and would we allow him to get breakfast. I told Mr. Black that I was hungry myself. Mr. Frank said let me have a cup of coffee. Mr. Black in a kind of sideways, said, "I think a drink of whiskey would do him good," and Mrs. Frank made the remark that she didn't think there was any whiskey in the house. Mr. Frank seemed to be extremely nervous. His questions were jumpy. I never heard him speak in my life until that morning. His voice was a refined voice, it was not coarse. He was rubbing his hands when he came through the curtains. He moved about briskly. He seemed to be excited. He asked questions in rapid succession, but gave plenty of time between questions to have received an answer. Mr. Frank and Mr. Black got on the rear seat and I took the front seat and as I was fixing to turn around, one of us asked Mr. Frank if he knew a little girl by the name of Mary Phagan. Mr. Frank says: "Does she work at the factory?" and I said, "I think she does." Mr. Frank said, "I cannot tell whether or not she works there until I look on my pay roll book, I know very few of the girls that work there. I pay them off, but I very seldom go back in the factory and I know very few of them, but I can look on my pay roll book and tell you if a girl by the name of Mary Phagan works there." One of us suggested that we take Mr. Frank by the undertaking establishment and let him see if he knew this young lady. Mr. Frank readily consented, so we stopped at the telephone exchange, Mr. Frank, Mr. Black and myself got out and went in the undertaking establishment. I saw the corpse. The corpse was lying in a little kind of side out room to the right of a large room. The light was not lit in this little room where the body was laying, and Mr. Gheesling stepped in ahead of me and went around behind the corpse and lit the light above her head and her head was lying then towards the wall. I stepped up on the opposite side of the corpse with a door to my left. Mr. Gheesling caught the face of the dead girl and turned it over towards me. I looked then to see if anybody followed me and I saw Mr. Frank step from outside of the door into what I thought was a closet, but I have afterwards found it was where Mr. Gheesling slept, or where somebody slept. There was a little single bed in there. I immediately turned around and came back out, in front of the office. I didn't see Frank look at the corpse. I don't remember that Mr. Frank ever followed me in this room. He may have stopped on the outside of the door, but my back was toward him and I don't know where he stopped. Mr. Gheesling turned the head of the deal girl over towards me and I looked around to see who was behind me and I saw Mr. Frank as he made that movement behind me. He didn't go into the closet as far as I could see, but he got out of my view. He could have looked at the corpse from the time that Mr. Gheesling was going around behind, but he could not have seen her face because it was lying over towards the wall. The face was away from me and I presume that was the cause of Mr. Gheesling turning it over. There was some question asked Mr. Frank if he knew the girl, and I think he replied

that he didn't know whether he did or not but that he could tell whether she worked at the factory by looking at his pay roll book. As we were leaving Mr. Frank's house, Mr. Frank asked Mrs. Frank to telephone Mr. Darley to come to the factory. Mr. Frank was apparently still nervous at the undertaking establishment, he stepped lively. It was just his general manner that indicated to me that he was nervous. I never saw Mr. Frank in my life until that morning. After we got out of Mr. Frank's house and was in my car, was the first time Mr. Frank had been told that the young lady was named Mary Phagan and that there had been any murder committed at the factory. From the undertaker's we went to the pencil factory in my car. We went into Mr. Frank's office, he went up to the safe, turned the combination, opened the safe, took out his time book, laid the book down on the table, ran his finger down until he came to the name Mary Phagan, and said, "Yes, Mary Phagan worked here, she was here yesterday to get her pay." He said, "I will tell you about the exact time she left there. My stenographer left about twelve o'clock, and a few minutes after she left the office boy left and Mary came in and got her money and left." He said she got $1.20 and he asked whether anybody had found the envelope that the money was in. Frank still seemed to be nervous like the first time I seen him. It was just his quick manner of stepping around and his manner of speech like he had done at the house that indicated to me that he was nervous. He then wanted to see where the girl was found. Mr. Frank went around by the elevator, where there was a switch box on the wall and Mr. Frank put the switch in. The box was not locked. Somebody asked him if he was used to keeping the switch box locked. He said they had kept it locked up to a certain time until the insurance company told him that he would have to leave it unlocked, that it was a violation of the law to keep an electric switch box locked. We then stepped on the elevator. He still stepped about lively and spoke up lively, answering questions, just like he had always done. After we got on the elevator, he jerked at the rope and it hung and he called Mr. Darley to start it and we all stepped out of the elevator. Mr. Darley came and pulled at the rope two or three times and the elevator started. As to whether anybody made any statement down in the basement as to who was responsible for the murder, I think Mr. Frank made the remark that Mr. Darley had worked Newt Lee for sometime out at the Oakland plant and that if Lee knew anything about the murder that Darley would stand a better chance of getting it out of him than anybody else. After we came back from the basement it was suggested that we go to the station house and as we started out Mr. Frank says, "I had better put in a new slip, hadn't I, Darley?" Darley told him yes to put in a slip. Frank took his keys out, unlocked the door of the right-hand clock and lifted out the slip, looked at it and made the remark that the slip was punched correctly. Mr. Darley and Newt Lee was standing there at the time Mr. Frank said the punches had been made correctly. Mr. Frank then put in a new slip, closed the door, locked it and took his pencil and wrote on the slip that he had already taken out of the machine, "April 26, 1913." I looked at the slip that Mr. Frank took out

(Defendant's Exhibit I), the first punch was 6:01, the second one was 6:32 or 6:33. He took the slip back in his office. I glanced all the way down and there was a punch for every number. While we were walking through the factory Mr. Frank asked two or three times to get a cup of coffee. As to what Mr. Frank said about the murder, I don't know that I heard him express himself except down in the basement. The officers showed him where the body was found and he made the remark that it was too bad or something to that effect. When we left the factory to go to police headquarters, Newt Lee was under arrest. I never considered Mr. Frank as being under arrest at that time. There had never been said anything to him in my presence about putting him under arrest. Mr. Frank's appearance at the station house was exactly like it was when I first saw him. He stepped quickly, when the door of the automobile was open, he jumped lightly off Mr. Darley's lap, went up the steps pretty rapid.

CROSS EXAMINATION.

I never saw Mr. Frank until that morning. I don't know whether his natural movements or manner of speech were quick or not. We didn't know whether the girl was a white girl or not until we rubbed the dirt from the child's face and pulled down her stocking a little piece. The tongue was not sticking out, it was wedged between the teeth. She had dirt in her eye and mouth. The cord around her neck was drawn so tight it was sunk in her flesh and the piece of underskirt was loose over her hair. I don't know whether Mr. Frank went upstairs or not after we reached his house. I think he called to his wife to get him his collar and tie. He got his coat and vest some place, but I don't know where. At the time Mrs. Frank was calling Mr. Darley, Mr. Frank was putting on his collar and tie down in the reception hall. We were at the house 15 or 20 minutes. After Mrs. Frank had said something about Mr. Frank getting his breakfast before he went, Mr. Black said something about a drink would do good. Mrs. Frank then called her mother, who said that there wasn't any liquor in the house, that Mr. Selig had an acute attack of indigestion the night before and used it all up. Mr. Frank readily consented to go to the undertaker's with us. When we got in the car we told him it was Mary Phagan and he said he could tell whether she was an employee or not by looking at his book, that he knew very few of the girls. Yes, anybody facing the door of the little chapel at the undertaker's could have seen the corpse. As to whether I know that Mr. Frank didn't see the corpse, he could have got a glance at the whole corpse, but when Mr. Gheesling turned the face over no one could have got a good look at the face unless they stepped in the room. Mr. Gheesling turned the young lady's face directly toward me, Mr. Frank was standing somewhere behind me, outside of the room. I turned around to see if Mr. Frank was looking. I don't know that he didn't get a glance at the corpse, but no one but Mr. Gheesling and I at this moment stepped up and looked at the little girl's face. What Mr. Frank and Mr. Black saw behind my back, I can't say. I don't say that Mr.

Frank stepped into that dressing room, but he passed out of my view. So did Mr. Black. Mr. Gheesling had a better view of Mr. Black and Mr. Frank than I did, because my back was to them and Mr. Gheesling was looking straight across the body at them. Mr. Frank had no difficulty in unlocking the safe when we went back to the factory. The elevator we went down on is a freight elevator, makes considerable noise. It stops itself when it gets to the bottom. I don't think it hits the ground. She was lying on her face with her hands folded up. Her face was turned somewhat toward the left wall. A bruise on the left side of her head, some dry blood in her hair. One of her eyes were blackened. There were several little scratches on her face. Somebody worked her arms to see if they were stiff. The arms worked a little bit. The joints in her arms worked just a little bit. When we first went down the basement we stayed down there about 20 or 25 minutes. During that time neither the shoe, the hat, nor the umbrella had been found. In the elevator shaft there was some excrement. When we went down on the elevator, the elevator mashed it. You could smell it all around. It looked like the ordinary healthy man's excrement. It looked like somebody had dumped naturally; that was before the elevator came down. When the elevator came down afterwards it smashed it and then we smelled it. As to the hair of the girl any one could tell at first glance that it was that of a white girl.

RE-DIRECT EXAMINATION.

The body wasn't lying at the undertakers where it could have been seen from the door.

RE-CROSS EXAMINATION.

At the moment the face was turned towards me, I didn't see Mr. Frank but I know a person couldn't have looked into the face unless he was somewhere close to me. I was inside and Mr. Frank never came into that little room.

RE-DIRECT EXAMINATION.

When the face was turned towards me, Mr. Frank stepped out of my vision in the direction of Mr. Gheesling's sleeping room.

MISS GRACE HICKS, sworn for the State.

I knew Mary Phagan nearly a year at the pencil factory. She worked on the second floor. I identified her body at the undertaker's Sunday morning, April 27th. I knew her by her hair. She was fair skinned, had light hair, blue eyes and was heavy built, well developed for her age. I worked in the metal room, the same room she worked in. Mary's machine was right next to the dressing room, the first machine there. They had a separate closet for men and a separate one for ladies on that floor. There was just a partition between them. In going to the office from the closets they would pass the

dressing room and Mary's machine within two or three feet. Mr. Frank, during the past twelve months, would pass through the metal department looking around every day. Sometimes I would see him talking to some of the men in the office at the clocks. He came back to the metal room to see how the work was getting on. The metal is kept in a little closet back under the stair steps. I asked Mr. Quinn, not Mr. Frank, if the metal had come. Saturday at twelve o'clock is the regular pay-day, but the week of April 26th most of the employes got paid off on Friday night between six and seven o'clock. I hadn't worked there since Wednesday. Mr. Quinn called me up and told me that pay-day would be Friday. The metal had not come from Monday to Saturday. Mary didn't work after Monday of that week.

CROSS EXAMINATION.

Standing at the time clock you can't see into Mr. Frank's private office. A person wouldn't see from Mr. Frank's office any one coming in or out of the building. I worked at the factory five years. In that time Mr. Frank spoke to me three times. Mary Phagan worked at the factory with me for about a year in the same department and I never saw Mr. Frank speak to Mary Phagan or Mary Phagan speak to Mr. Frank. When Mr. Frank came through the metal department he never spoke to any of the girls; just went through and looked around. The three times Mr. Frank spoke to me were as follows: He was showing a man around and I was laying on my arm mighty near asleep and he says "You can run this machine asleep can't you," and I said, "Yes, sir." Then another time I asked him for a quarter and he loaned me a quarter. The next time I met him on the street he tipped his hat to me. Mr. Frank knew my face or he wouldn't have spoken to me on the street. The floor in the metal department is awful dirty. The white stuff that they use back there gets all over the floors. Mr. Darley is general manager and foreman who employes the help. Mary Phagan's hair was darker than mine. She weighed about 115 pounds. Sometimes we sit over at the machine and comb our hair and sometimes when I want to curl my hair with a poker or anything, I go over there to the table right by the window and light the gas and curl my hair. Magnolia Kennedy's hair is nearly the color of Mary Phagan's. The pay is given employes from a window in the packing department. There is paint in the polishing room, just across from the dressing room. The door of the polishing room is a few feet across from the dressing room. No paint is kept in the metal room. I have seen drops of paint on the floor. I have seen it leading from the door straight across from the dressing room out to the cooler where the women come out to get water. The floor all over the factory is dirty and greasy. And after two or three days you can't hardly tell what is on the floor after it gets mixed with the dirt and dust. I saw Helen Ferguson Friday, April 25th, when we were paid off.

JOHN R. BLACK, sworn for the State.

I am a city policeman. I don't know the details of the conversation between Mr. Starnes and Mr. Frank over the 'phone. I didn't pay very much attention to it. I went over to Mr. Frank's house with Boots Rogers. Mrs. Frank came to the door. Mrs. Frank had on a bath robe. I stated that I would like to see Mr. Frank and about that time Mr. Frank stepped out from behind a curtain. His voice was hoarse and trembling and nervous and excited. He looked to me like he was pale. I had met Mr. Frank on two different occasions before. On this occasion he seemed to be nervous in handling his collar. He could not get his tie tied, and talked very rapid in asking questions in regard to what had happened. He wanted to know if he would have time to get something to eat, to get some breakfast. He wanted to know if something had happened at the pencil factory and if the night watchman had reported it, and he asked this last question before I had time to answer the first. He kept insisting for a cup of coffee. When we got into the automobile as Mr. Rogers was turning around Mr. Frank wanted to know what had happened at the factory, and I asked him if he knew Mary Phagan and told him that she had been found dead in the basement of the pencil factory. Mr. Frank said he didn't know any girl by the name of Mary Phagan, that he knew very few of the employes. I suggested to Mr. Rogers that we drive by the undertaker's. In the undertaking establishment Mr. Frank looked at her. He gave a casual glance at her and stepped aside. I couldn't say whether he saw the face of the girl or not. There was a curtain hanging near the room and Mr. Frank stepped behind the curtain. He could get no view from behind the curtain. He walked behind the curtain and came right out. Mr. Frank stated as we left the undertaking establishment that he didn't know the girl but he believed he had paid her off on Saturday. He thought he recognized her being at the factory on Saturday by the dress that she wore but he could tell by going over to the factory and looking at his cash book. At the pencil factory Mr. Frank took the slip out, looked over it and said it had been punched correctly. On Monday and Tuesday following Mr. Frank stated that the clock had been mis-punched three times. This slip was turned over to Chief Lanford on Monday. I saw Mr. Frank take it out of the clock and went back with it toward his office. I don't know of my own personal knowledge that it was turned over to Chief Lanford Monday. When Mr. Frank was down at police station on Monday morning Mr. Rosser and Mr. Haas were there. About 8 or 8:30 o'clock Monday morning Mr. Rosser came in police headquarters. That's the first time he had counsel with him. That morning Mr. Haslett and myself went to Mr. Frank's house and asked him to come down to police headquarters. About 11:30 Monday Mr. Haas demanded of Chief Lanford that officers accompany Mr. Frank out to his residence and search his residence. Mr. Haas stated in Frank's presence that he was Mr. Frank's attorney and demanded to show that there was nothing left undone, that we go out to Mr. Frank's house and search for

anything that we might find in connection with the case. On Tuesday night Mr. Scott and myself suggested to Mr. Frank to talk to Newt Lee. Mr. Frank spoke well of the negro, said he had always found him trusty and honest. They went in a room and stayed from about 5 to 10 minutes alone. I couldn't hear enough to swear that I understood what was said. Mr. Frank stated that Newt still stuck to the story that he knew nothing about it. Mr. Frank stated that Mr. Gantt was there on Saturday evening and that he told Newt Lee to let him go and get the shoes but to watch him, as he knew the surroundings of the office. After this conversation Gantt was arrested. Frank made no objections to talking to Newt Lee. Mr. Frank was nervous on Monday. After his release Monday he seemed very jovial. On Tuesday night Frank said at station house that there was nobody at factory at 6 o'clock, but Newt Lee and that Newt ought to know more about it, as it was his duty to look over factory every thirty minutes. Also that Gantt was there Saturday evening and he left him there at 6 o'clock and that he and Gantt had some trouble previous to discharge of Gantt and that he at first refused to allow Gantt to go in factory, but Gantt told him he left a pair of shoes there.

CROSS EXAMINATION.

When I said that Mr. Frank was released I spoke before I thought. I retracted it on cross-examination. I don't know that Mr. Rosser was at the police station between 8 and 8:30 Monday morning, I said that to the best of my recollection. I wouldn't swear Mr. Rosser was there. I heard Mr. Rosser say to Mr. Frank to give them a statement without a conference at all between Mr. Frank and Mr. Rosser. I said that we wanted to have a private talk with Mr. Frank without Mr. Rosser being present. I wanted to talk to Mr. Frank without Mr. Rosser being present. While I was at the coroner's inquest Mr. Frank answered every question readily. I wouldn't swear positively, but to the best of my recollection I had a conversation with Mr. Frank on two previous occasions. When I met Mr. Frank on previous occasions I don't remember anything that caused me to believe he was nervous, nothing unusual about him. I heard the conversation Mr. Starnes had over the telephone with Mr. Frank early that morning. It was about a quarter to six, or a quarter past six. I think we got to the undertaker's about 6:20. As to the reason why I didn't tell Mr. Frank about the murder when I was inside the house, but did tell him as soon as he got in the automobile, I had a conversation with Newt Lee and I wanted to watch Mr. Frank and see how he felt about the murder. Mr. Frank didn't go upstairs and put his collar and cravat on. Mrs. Frank brought him his collar and tie, I don't know where she got them. He told her to bring his collar and tie and he got his coat and hat. I don't know whether he went back to his home or not. He put his collar and tie on right there. I don't know where he got his coat and vest at. I don't know what sort of tie or collar he had. He put his collar and tie on like anybody else would; tied it himself. I don't know

whether Mr. Frank finished dressing upstairs or not. I couldn't see him when he went behind those curtains. We stayed at the Frank home about ten minutes. At the undertaking establishment I was right behind Mr. Frank. He was between me and the body. I saw the face when the undertaker turned her over. Yes, Mr. Frank being in front of me had an opportunity to see it also. No, Mr. Frank didn't go into that sleeping room. Mr. Frank went out just ahead of me. When we went back to the pencil factory Mr. Frank went to the safe and unlocked it readily at the first effort. He got the book, put it on the table, opened it at the right place, ran his finger down until he came to the name of Mary Phagan and says, "Yes, this little girl worked here and I paid her $1.20 yesterday." We went all over the factory that day. Nobody saw that blood spot that morning. I guess there must have been thirty people there during that day. Nobody saw it. I was there twice that day. Mr. Starnes was there with me. He didn't call attention to any blood spots. Chief Lanford was there, and he didn't discover any blood spots. Mr. Frank was at the police station on Monday from 8:30 until about 11:30. Mr. Frank told me he had discharged Mr. Gantt on account of shortage and had given orders not to let him in the factory. As regards Mr. Frank's linen, Mr. Haas said he was Mr. Frank's attorney and requested that we go to Mr. Frank's house and look over the clothes he had worn the week before and the laundry too. Yes, we went out there and examined it. Mr. Frank had had no opportunity to telephone his house from the time we mentioned it until we got out there. He went with us and showed us the dirty linen. I examined Newt Lee's house. I found a bloody shirt in the bottom of a clothes barrel there on Tuesday morning about 9 o'clock.

RE-DIRECT EXAMINATION.

Mr. Frank had told me that he didn't think Newt Lee had told all he knew about the murder. He also said after looking over the time sheet and seeing that it hadn't been punched correctly that that would have given Lee an hour to have gone out to his house and back. I don't know when he made this last statement. I don't remember whether that was before or after I went out to Lee's house and found the shirt. We went into his house with a skeleton key. It was after Frank told me about the skips in the punches. The shirt is just like it was the day I found it. The blood looks like it is on both sides of the shirt.

RE-CROSS EXAMINATION.

I don't know whether I went out to Lee's house before or after Mr. Frank suggested the skips in the time slips. I don't like to admit it, but I am so crossed up and worried that I don't know where I am at, but I think to the best of my knowledge it was Monday that Frank said that the slips had been changed.

MRS. J. W. COLEMAN, re-called for the State.

Mary carried a little silver mesh bag the day she left her home, made of German silver. This looks like the handkerchief that she carried. (State's Exhibit "M.")

J. M. GANTT, sworn for the state.

From June last until the first of January I was shipping clerk at the National Pencil Company. I was discharged April 7th by Mr. Frank for alleged shortage in the pay roll. I have known Mary Phagan when she was a little girl. Mr. Frank knew her, too. One Saturday afternoon she came in the office to have her time corrected, and after I had gotten through Mr. Frank came in and said, "You seem to know Mary pretty well." No, I had not told him her name. I used to know Mary when she was a little girl, but I have not seen her up to the time I went to work for the factory. My work was in the office and she worked in the rear of the building on the same floor in the tip department. After I was discharged, I went back to the factory on two occasions. Mr. Frank saw me both times. He made no objection to my going there. One girl used to get pay envelopes for another girl with Mr. Frank's knowledge. There was an alleged shortage in the pay roll of $2.00. Mr. Frank came to see me about it and I told him I didn't know anything about it, and he said he wasn't going to make it good, and I said I wasn't, and he then discharged me. Prior to my being discharged Mr. Frank told me he had the best office force he ever had. I was the time keeper. Mr. Frank could sit at his desk and see the employees register at the time clock if the safe door was closed. Mr. Frank did not fix the clock frequently, possibly two or three times. On April 26, about six o'clock I saw Newt Lee sitting out in front of the factory and I remembered that I left a pair of shoes up there and I asked Newt Lee what about my getting them, and he said he couldn't let me up. I said Mr. Frank is up there, isn't he? because I had seen him in the window from across the street, and while we were standing there talking, in two or three minutes, Mr. Frank was coming down the stairway and got within fifteen feet of the door when he saw me and when he saw me he kind of stepped back like he was going to go back, but when he looked up and saw that I was looking at him he came on out, and I said "Howdy, Mr. Frank," and he kind of jumped again. I told him I had a pair of shoes up there I would like to get and he said, "Do you want to go with me, or will Newt Lee be all right?" and he kind of studied a little bit, and said, "What kind of shoes were they?" and I said, "They were tan shoes," and he said, "I think I saw a negro sweeping them up the other day." And I said, "Well, I have a pair of black ones there, too," and he kind of studied a little bit, and said "Newt, go ahead with him and stay with him until he gets his shoes," and I went up there and found both pair right where I had left them. Mr. Frank looked pale, hung his head, and nervous

and kind of hesitated and stuttered like he didn't like me in there somehow or other.

CROSS EXAMINATION.

I testified at the coroner's inquest. I admit I did not testify about Frank's knowing Mary very well there, that has been recalled to my mind since I was arrested on Monday, April 28th, at 11 o'clock and held until Thursday night about six.

MRS. J. A. WHITE, sworn for the State.

I saw my husband at the pencil factory at 11:30. I stayed there until about 10 minutes to 12. I left him there and came back about 12:30 and left again about 1 o'clock. When I got there at 11:30 I saw Miss Hall, the stenographer, Mr. Frank and two men. I asked Mr. Frank if I could see my husband Mr. White. Mr. Frank was in the outside office then. He said I could see him and sent word by Mrs. Emma Freeman for him to come downstairs. My husband came to the foot of the stairs on the second floor. I talked to him about 15 minutes and went on out. I returned about 12:30. Mr. Frank was in the outside office standing in front of the safe. I asked him if Mr. White had gone back to work. He jumped like I surprised him and turned and said, "Yes." It wasn't much of a jump. I went upstairs then to see Mr. White. Harry Denham was with him working on the fourth floor. They were hammering. It was not a continuous noise they were making. I heard the hammer not more than once or twice. Mr. Frank came upstairs while I was up there, somewhere about 1 o'clock. I know it was before one because at one I was at McDonald's furniture store, four or five blocks from the factory. I got there a few minutes after one. Mr. Frank told Mr. White if I wanted to get out before 3 o'clock, to come on down because he was going to leave and lock the door, that I had better be ready to go as soon as he got his coat and hat. I went on out and as I passed he was sitting in the outside office writing at a table. As I was going on down the steps I saw a negro sitting on a box close to the stairway on the first floor. Mr. Frank did not have his coat or hat on when I passed out.

CROSS EXAMINATION.

I left the factory about 1 o'clock. I wouldn't say that it was positively ten minutes to one. While I was talking to my husband at the factory, Miss Corinthia Hall, May Barrett and her daughter were there. Mrs. Barrett had been upstairs and her daughter came down afterwards. Miss Hall and Mrs. Freeman left first, Mrs. Barrett and her daughter left next and then I went. That was about ten minutes to twelve. I saw the negro sitting between the stairway and the door about five or six feet from the foot of the stairway. I wouldn't be able to identify him.

HARRY SCOTT, sworn for the state.

I am Superintendent of the local branch of the Pinkerton Detective Agency. I have worked on this case with John Black, city detective. I was employed by Mr. Frank representing the National Pencil Company. I saw Mr. Frank Monday afternoon, April 28, at the pencil factory. We went into Mr. Frank's private office. Mr. Darley and a third party were with us. Mr. Frank said, "I guess you read in the newspapers about the horrible crime that was committed in this factory, and the directors of this company and myself have had a conference and thought that the public should demand that we have an investigation made, and endeavor to determine who is responsible for this murder." And Mr. Frank then said he had just come from police barracks and that Detective Black seemed to suspect him of the crime, and he then related to me his movements on Saturday, April 26th, in detail. He stated that he arrived at the factory at 8 a. m., that he left the factory between 9:30 and 10 with Mr. Darley for Montag Bros. for the mail, that he remained at Montag Bros. for about an hour; that he returned to the factory at about 11 o'clock, and just before twelve o'clock Mrs. White, the wife of Arthur White, who was working on the top floor of the building that day with Harry Denham, came in and asked permission to go upstairs and see her husband. Mr. Frank granted her permission to do so. He then stated that Mary Phagan came in to the factory at 12:10 p. m. to draw her pay; that she had been laid off the Monday previous and she was paid $1:20; that he paid her off in his inside office where he was at his desk, and when she left his office and went in the outer office, she had reached the outer office door, leading into the hall and turned around to Mr. Frank and asked if the metal had come yet; Mr. Frank replied that he didn't know and that Mary Phagan then he thought reached the stairway, and he heard voices, but he could not distinguish whether they were men or girls talking, that about 12:50 he went up to the fourth floor and asked White and Denham when they would finish up their work and they replied they wouldn't finish up for a couple of hours; that Mrs. White was up there at the time and Frank informed Mrs. White that he was going to lock up the factory, that she had better leave; Mrs. White preceded Mr. Frank down the stairway and went on out of the factory as far as he knew, but on the way out, Mrs. White made the statement that she had seen a negro on the street floor of the building behind some boxes, and Mr. Frank stated that at 1:10 p. m. he left the factory for home to go to luncheon; he arrived at the factory again at 3 p. m., went to work on some financial work and at about four o'clock the night watchman reported for work, as per Mr. Frank's instructions the previous day; that he allowed Newt Lee to go out and have a good time for a couple of hours and report again at six o'clock, which Newt did and at six o'clock when Lee returned to the factory, he asked Mr. Frank, as he usually did, if everything was all right, and Mr. Frank replied "Yes" and Lee went on about his business. Mr. Frank left the factory at 6:04 p. m. and when he

reached the street door entrance he found Lee talking to Gantt, an ex-bookkeeper who Frank had discharged for thieving. Mr. Frank stated that he had arrived home at about 6:25 p. m. and knowing that he had discharged Gantt, he tried to get Lee on the telephone at about 6:30; knowing that Lee would be in the vicinity of the time clock at that time and could hear the telephone ring; that he did not succeed in getting him at 6:30, but that he got him at seven; that he asked Lee the question if Gantt had left the factory and if everything was all right, to which Lee replied "Yes," and he hung up the receiver. Mr. Frank stated he went to bed somewhere around 9:30.

After that Mr. Frank and Mr. Darley accompanied me around the factory and showed me what the police had found. Mr. Darley being the spokesman. We went first to the metal room on the second floor, where I was shown some spots supposed to be blood spots, they were already chipped up, and I was taken to a machine where some strands of hair were supposed to have been found. From there we went down and examined the time clock and went through the scuttle hole and down the ladder into the basement, where I was shown where everything had been found. As to Mr. Frank's manner and deportment at the time we were in his office, he seemed to be perfectly natural. I saw no signs of nervousness. Occasionally between words he seemed to take a deep breath, and deep sighs about four or five times. His eyes were very large and piercing. They looked about the same they do now. He was a little pale. He gave his narrative rather rapidly. As to whether he stated any fixed definite time as to hours or minutes, he didn't state any definite time as to when Mary Phagan came in, he said she came in at about 12:10. We furnished attorneys for Frank with reports. After refreshing my memory I now state that Mr. Frank informed me at the time I had that conversation with him that he heard these voices before 12 o'clock, before Mary Phagan came. He also stated during our conversation that Gantt knew Mary Phagan very well, that he was familiar and intimate with her. He seemed to lay special stress on it at the time. He said that Gantt paid a good deal of attention to her. As to whether anything was said by any attorney of Frank's as to our suppressing any evidence as to this murder, it was the first week in May when Mr. Pierce and I went to Mr. Herbert J. Haas' office in the 4th National Bank Building and had a conference with him as to the Pinkerton Agency's position in the matter. Mr. Haas stated that he would rather we would submit our reports to him first before we turned it over to the public and let them know what evidence we had gathered. We told him we would withdraw before we would adopt any practice of that sort, that it was our intention to work in hearty co-operation with the police.

I saw the place near the girls' dressing room on the office floor, fresh chips had already been cut out of the floor and I saw white smeared where the chips had been cut out and there were also some dark spots near the

chipped out places. It was just as though somebody had taken a cloth and rubbed some white substance around in a circle, about eight inches in diameter. This white stuff covered all of the dark spots. I didn't note any unusual signs of nervousness about Frank in his office. There wasn't any trembling or anything of that sort at that time. He was not composed. On Tuesday night, April 29, Black, Mr. Frank and myself were together and Mr. Black told Mr. Frank that he believed Newt Lee was not telling all that he knew. I also said to Mr. Frank that Newt knew more than he was telling, and that as he was his employer, I thought he could get more out of the nigger than we could, and I asked him if he would consent to go into a room as employer and employee and try to get it out of him. Mr. Frank readily consented and we put them in a private room, they were together there for about ten minutes alone. When about ten minutes was up, Mr. Black and I entered the room and Lee hadn't finished his conversation with Frank and was saying, "Mr. Frank it is awful hard for me to remain handcuffed to this chair," and Frank hung his head the entire time the negro was talking to him, and finally in about thirty seconds, he said, "Well, they have got me too." After that we asked Mr. Frank if he had gotten anything out of the negro and he said, "No, Lee still sticks to his original story." Mr. Frank was extremely nervous at that time. He was very squirmy in his chair, crossing one leg after the other and didn't know where to put his hands; he was moving them up and down his face, and he hung his head a great deal of the time while the negro was talking to him. He breathed very heavily and took deep swallows, and sighed and hesitated somewhat. His eyes were about the same as they are now. That interview between Lee and Frank took place shortly after midnight, Wednesday, April 30. On Monday afternoon, Frank said to me that the first punch on Newt Lee's slip was 6:33 p. m., and his last punch was 3 a. m. Sunday. He didn't say anything at that time about there being any error in Lee's punches. Mr. Black and I took Mr. Frank into custody about 11:30 a. m. Tuesday, April 29th. His hands were quivering very much, he was very pale. On Saturday, May 3, I went to Frank's cell at the jail with Black and I asked Mr. Frank if from the time he arrived at the factory from Montag Bros. up until 12:50 p. m., the time he went upstairs to the fourth floor, was he inside of his office the entire time, and he stated "Yes." Then I asked him if he was inside his office every minute from 12 o'clock until 12:30 and he said "Yes." I made a very thorough search of the area around the elevator and radiator and back in there. I made a surface search. I found nothing at all. I found no ribbon or purse, or pay envelope, or bludgeon or stick. I spent a great deal of time around the trap door and I remember running the light around the door way right close to the elevator, looking for splotches of blood, but I found nothing.

CROSS EXAMINATION.

Yes, I sent you this report as to what happened between Mr. Herbert J. Haas and myself: "This afternoon Supt. H. B. Pierce and myself held a conference with Mr. Herbert Haas, at which the agency's position in the matter was discussed, and Mr. Haas stated they wanted to learn who the murderer was, regardless of who it involved." Mr. Haas told me that after I had told him we would withdraw from the case before we would not co-operate with the police. No, I did not report that to you. I reported the motive of our conference. No, I did not say anything about Mr. Haas wanting us to do anything except locate the murderer. Yes, I talked to you afterwards and you also told me to find the murderer, even if it was Frank. Mr. Haas had said to Mr. Pierce and me that he would rather that we submit our reports of evidence to him before we turned it over to the police. No, there was nothing said about not giving this to the police. I testified at the coroner's inquest as to what conversation I had with Mr. Frank. I did not give you in my report the details of Mr. Frank's morning movements, when he left home, arrived at the factory and went to Montag Bros., and returned to the factory. As to my not saying one word about Gantt being familiar with this little girl, that was just an oversight, that is all. No, I did not testify to that either at the coroner's inquest. I didn't put it in the report to you, because Gantt was released the next day and I didn't consider him a suspect. There was no reason for my not giving it to you. It was an oversight. I am representing the National Pencil Company, who employed me, and not Mr. Frank individually. It is true in my report to you with reference to the interview between me and Mr. Frank that I stated "I had no way of knowing what they said because they were both together privately in a room there and we had no way of knowing except what Lee told us afterwards." I now state that I did hear the last words of Lee. I didn't put in my notes that Gantt was familiar with Mary Phagan, I don't put everything in my notes and the coroner didn't examine me about it either. No, I didn't tell the coroner anything about Frank crossing his legs and putting his hands up to his face. I never went into detail down there. No, I didn't mention his hanging his head. We always work with the police on criminal cases. No, I did not testify before the coroner about any white stuff having been smeared over these supposed blood spots. I am not sure whether I got the statement about Mary Phagan being familiar with Gantt from Mr. Darley or Mr. Frank. Mr. Frank was present at the time. Mr. Frank told me when the little girl asked if the metal had come back that he said "I don't know." It may be true that I swore before the coroner that in answer to that question from Mary Phagan as to whether the metal had come yet that Frank said, "No," and it is possible that I so reported to you. If I said "No," I meant "I don't know." I say now that Mr. Frank told me he left the factory at 1:10 p. m. If I reported to you that he told me he left at one o'clock, I made a very

serious mistake. That is an oversight. Yes, I reported to the police before I reported to Mr. Haas or Mr. Montag.

RE-DIRECT EXAMINATION.

Yes, our agency reported to the police about finding the club. I find it is in our report of May 15th. I don't know when it was reported; I was out of town. I worked all through this case with Detective Black and every move he made was known to both of us. As to the stairway from the basement to the upper floor, there was a great deal of dust on the stairs and the dust didn't seem to be disturbed. This stairway is not in the picture but is near the back door. It was nailed and closed.

MISS MONTEEN STOVER, sworn for the State.

I worked at the National Pencil Company prior to April 25th, 1913. I was at the factory at five minutes after twelve on that day. I stayed there five minutes and left at ten minutes after twelve. I went there to get my money. I went in Mr. Frank's office. He was not there. I didn't see or hear anybody in the building. The door to the metal room was closed. I had on tennis shoes, a yellow hat and a brown rain coat. I looked at the clock on my way up, it was five minutes after twelve and it was ten minutes after twelve when I started out. I had never been in his office before. The door to the metal room is sometimes open and sometimes closed.

CROSS EXAMINATION.

I didn't look at the clock to see what time it was when I left home or when I got back home. I didn't notice the safe in Mr. Frank's office. I walked right in and walked right out. I went right through into the office and turned around and came out. I didn't notice how many desks were in the outer office. I didn't notice any wardrobe to put clothes in. I don't know how many windows are in the front office. I went through the first office into the second office. The factory was still and quiet when I was there. I am fourteen years old and I worked on the fourth floor of the factory. I knew the paying-off time was twelve o'clock on Saturday and that is why I went there. They don't pay off in the office, you have to go up to a little window they open.

RE-DIRECT EXAMINATION.

The door to the metal room is sometimes closed and sometimes open. When the factory isn't running the door is closed.

R. P. BARRETT, sworn for the State.

I am a machinist for the National Pencil Company. I have been there about eight weeks. On Monday morning, April 28th, I found an unusual spot

that I had never seen before at the west end of the dressing room on the second floor of the pencil factory. That spot was not there Friday. The spot was about 4 or 5 inches in diameter and little spots behind these from the rear—6 or 8 in number. I discovered these between 6:30 and 7 o'clock Monday. It was blood. It looked like some white substance had been wiped over it. We kept potash and haskoline, both white substances, on this floor. This white stuff was smeared over the spots. It looked like it had been smeared with a coarse broom. There was a broom on that floor, leaning up against the wall. No, the broom didn't show any evidence of having been used, except that it was dirty. It was used in the metal department for cleaning up the grease. The floor was regularly swept with a broom of finer straw. I found some hair on the handle of a bench lathe. The handle was in the shape of an "L." The hair was hanging on the handle, swinging down. Mell Stanford saw this hair. The hair was not there on Friday. The gas jet that the girls sometimes use to curl their hair on is about ten feet from the machine where the hair was found. Machine Number is No. 10. It is my machine. I know the hair wasn't there on Friday, for I had used that machine up to quitting time, 5:30. There was a pan of haskoline about 8 feet from where the blood was found. The nearest potash was in vats in the plating department, 20 or 25 feet away. The latter part of the week I found a piece of a pay envelope (State's Exhibit U) under Mary Phagan's machine. I have examined the area around the elevator on the main floor and I looked down the ladder and I never saw any stick. I did not find any envelope or blood or anything else there.

CROSS EXAMINATION.

I never searched for any blood spots before, until Miss Jefferson came in and said she understood Mary had been murdered in the metal department, then I started to search right away; that was the only spot I could find; I could tell it was blood by looking at it. I can tell the difference between blood and other substances. I found the hair some few minutes afterward—about 6 or 8 strands of hair and pretty long. When I left the machine on Friday I left a piece of work in there. When I got back the piece of work was still there. It had not been disturbed. The machine was in the same position in which I left it Friday night; there was no blood under this machine. There is no number or amount on the envelope I found, and no name on it, just a little loop, a part of a letter. Yes, I have been aiding Mr. Dorsey and the detectives search the building. Yes, Mr. Dorsey subpoenaed me to come to his office; it was a State subpoena. I gave him an affidavit.

MELL STANFORD, sworn for the State.

I have been working at the National Pencil Company a little over two years. I swept the whole floor in the metal room of Friday, April the 25th. On Monday there after I found a spot that had some white haskoline over it

on second floor near dressing room. That wasn't thereon Friday when I swept between 9 and 12 o'clock. I use a small broom in sweeping. I saw a big cane broom standing by the waste metal room on Monday about six feet from where the blood was found. The spot looked to me like it was blood, with dark spots scattered around. It looked like the large broom had been used in putting the haskoline on the floor by the impressions or scratches of the cane in the floor.

CROSS EXAMINATION.

I was a sweeper in the metal room. Yes, they have regular negro sweepers there for the building. I swept it all up because the negro wasn't there. It took me from 9 till 12 to sweep the whole floor. I moved everything and swept everything. I swept under Mary Phagan's and Barrett's machine. Next to the ladies' closet they store a lot of different things, mineral paints, barrels, boxes, all sort of things. That's part of the metal room where they are kept. I swept clear up to the doors of the toilets and clear up to the paint shop. It wasn't my duty to sweep where the machines are and where Mary worked but I did sweep there anyhow. I have done that several times before. There were paint spots in several different places up there when I swept up Friday. These blood spots were right in front of the ladies' dressing room. They led right up to the door.

MRS. GEORGE W. JEFFERSON, sworn for the State.

I work at the National Pencil Company. We saw blood on the second floor in front of the girls' dressing room on Monday. It was about as big as a fan, and something white was over it. I didn't see that blood there Friday. Yes, there are cords in the polishing room, used to tie pencils with. They are hung up on a post in the polishing room. The spots were dark red in color. These cords are taken off the pencils and we throw them on a nail. We don't untie the knots. This loop right here is in all of the cords. I work in the polishing room, polishing lead pencils. I have been working there five years. We use paint in there, maroon red, red line and bright red. Of course you can tell the bright red from maroon red and the red line from maroon red. That spot that I saw was not one of these three paints.

CROSS EXAMINATION.

Mr. Barrett and I discovered that spot there together. Yes, that is a dirty, greasy floor. You can see grease, but you don't see anything red on the floor—not in the metal room. You do in the polishing room. The paints don't come from the metal room. They are kept back in the other room. We carry the paint back in bottles. Of course if a bottle would break the paint would get all over the floor. The white stuff there didn't hide the red at all. You could see it plainly.

RE-DIRECT EXAMINATION.

The pencils are painted on the third floor. There isn't any paint used at all in the factory only in the polishing room, except on the third floor.

B. B. HASLETT, sworn for the State.

I went to Mr. Frank's house Monday morning after the murder, about 7 o'clock. I went out there and got him and took him to the station house. He was at the station house two or three hours. I told him Chief Lanford wanted to see him.

CROSS EXAMINATION.

I saw Mr. Rosser and Mr. Haas at the station house about 8:30 or 9 o'clock. Mr. Black and I both went out for Mr. Frank Monday morning. We took him to the station house and turned him over to Chief Lanford. They had Mr. Frank in there and a half dozen detectives, and Mr. Haas and you were there. When we went out to Mr. Frank's house he went with us. As to whether he had to go or not, I suppose if he had resisted we would have taken him. It was not a question as to whether he wanted to go or not, but he didn't know he had to go. As to why two of us went out after him—two of us generally go together after anybody, because if he don't go voluntarily, he would go anyhow,—we would take him.

E. F. HOLLOWAY, sworn for the State.

I am day watchman at the National Pencil factory—worked there two years. I was there on April 26th, from 6:30 a. m. till 11:45. I look after the elevator and freight that come in and out and people that come in and out. As to what I did to the elevator on that Saturday, I didn't do anything except that when Mr. White and Mr. Denham were working on the top floor, I started the elevator up and ripped up a plank for them. The elevator was locked when I sawed that plank for them, but when I left it was unlocked. I locked it Friday night when I left there. But I went off from there Saturday and forgot to lock it. When I made that affidavit for you on May 12th, 1913, I forgot to tell you that I did some sawing for Mr. White and Mr. Denham. The elevator was standing on the office floor when I left there Saturday. I left it standing right there. I had done some sawing for Mr. White and Mr. Denham just before I left and in talking to them I went off and forgot to lock it. In affidavit signed May 12th, 1913, in presence of Starnes, Campbell and others, in answer to question, "Is the power box left locked or unlocked?" I will say I locked it Friday when I left there. I don't remember saying in this affidavit that if the elevator box was kept unlocked on account of insurance companies requiring it that I never heard of it, that they always told me to lock it. I don't remember any questions being asked me about any keys. I read and signed my name to that paper before I signed it. I don't remember stating

that I locked it Saturday. I did say in that affidavit it is kept locked all the time. The reason I said at the coroner's inquest that the elevator box was always locked and that I left it locked on Saturday was because I forgot to tell about that sawing. I did that sawing just before I left there Saturday. Friday evening I never heard Mr. Frank say anything to Newt Lee. When I left the factory at 11:45 on Saturday Mr. Frank said to me "You can go ahead if you want to; we will all go at noon." At about 9:30 Mr. Frank and Mr. Darley went over to Montag Bros. I have seen Gantt talking to Mary Phagan frequently. The stairs leading from the first floor into the basement are in good condition. They haven't been used this year. They have been nailed up all the year. The area on first floor around trap-door down there was cleaned up about two weeks after the insurance people came over and went through the building.

CROSS EXAMINATION.

Mr. Denham and Mr. White were working there Saturday, up on the fourth floor. They were up there when I left the building. Anybody could have walked from the fourth floor to the second floor all day long; there was no obstruction. A man at the stairway on the third floor can see the second floor in front of the clock. The front doors were unlocked all the morning and they were still unlocked when I left. When Mr. Denham and Mr. White asked me to saw some timber for them that morning, I went and got the key and unlocked the motor that runs the elevator. I left it unlocked after that. Anybody could have started the elevator running then by throwing in the switch. I am familiar with the floor back there in the metal department. It is a very dirty, greasy, stained up floor—there isn't a worse one in town. Whenever you walk along there you will fall down if you are not very particular. The floor has never been washed the three years that I have been there. You see the analines and white stuff scattered all over the floor every day and the sweepers just sweep it along together. You see spots on the floor quite frequently. We work about 100 girls in the factory. Four or five of them work in the metal room. There is a lady's dressing room right there where they chipped up the spots, and right across from there is the toilet, not over six feet from it. I have seen blood spots frequently ever since I have been working there around the ladies toilets and the ladies dressing rooms; the foreladies would always tell me about it and I have often noticed it when we were working or sweeping or anything of the kind, and I would know what it meant. I would go back and have it cleaned. These spots that Barrett claims to have found I don't recall having noticed before; they would not have attracted my attention. They were right on the way to the ladies dressing room. Yes, this man Barrett discovered mighty near everything that was discovered in the building—hair, blood, and pay envelope. That is what he says. No, I have never seen Mr. Frank speak to Mary Phagan. I was at the factory at 6:30 Saturday morning. I was the first man that got there. Denham and White came in about 7 o'clock and went up on the fourth floor. They were doing some work

up there. I had to saw that plank for them. They told me that it would take them until about 3 o'clock. The office boy, Alonzo Mann, 13 or 14 years old, came in next. Mr. Frank came in about 8:30 or 8:45. He went right in his office, unlocked his safe and got out his books and went to work on them. Mr. Darley was the next one that came in and Miss Mattie Smith the next. She stayed about 10 minutes and went out again. I met Miss Corinthia Hall and Miss Emma Clark at the corner of Hunter and Broad coming toward the factory just as I was leaving. Miss Clark asked me if anybody was there—said she wanted her wrap, it was turning cold, and I said, "Yes, Mr. Frank will let you have it." There were several others came in that morning, but they came in while I was up stairs with Mr. White and Mr. Denham. There was no lock at all on the metal room door. Newt Lee closed up the building Friday. He looks after all the doors and windows plumb back to the back door in the basement. There were 7 or 8 negroes about the building, elevator boys and sweepers. On Saturday they paid off at 12 o'clock, right at the clock. Mr. Frank would always be in his office attending to his books when they paid off. We put up a sign saying that the paying off would be done Friday night instead of Saturday, because Saturday was a holiday. We put four signs on every floor. Elevator shaft is closed by sliding doors. Anybody can raise them, they are not locked. It is very dark around the elevator shafe on the first floor, filled with boxes all around there. We have two clocks. One runs to 100 and the other runs from 100 to 200. Each employe has a number. That is the reason we have two clocks. When Miss Mattie Smith came in she discovered a mistake about her time by the time she reached the clock. Mr. Frank and Mr. Darley corrected it in the office and then she left. Mr. Frank got back from Montag's about 11 o'clock. He had with him the folder in which he carries his papers. Nobody was with him when he came back. He went right up into his office. The stenographer was in the outer office when he got there. These cords here are found laying around everywhere in the building. They come on every bundle of slats that come into the building. The pencils are tied up with those slats at the top floor, brought down by elevator, carried in the packing room and those strings are then put on them. They get in the trash every day and into the basement. It is impossible to keep them out. I did not see Mary Phagan or Monteen Stover. The negro Conley was familiar with the whole building, every part of it.

RE-DIRECT EXAMINATION.

White and Denham were working on the fourth floor about thirty feet from the elevator. On May 12, 1913, I told you that the elevator was locked because I forgot to tell you I done some sawing. I took the key out, left the elevator unlocked and took the key back and put it in the office. Mr. Darley got to the factory about 9 o'clock Saturday. Miss Mattie Smith got there about 9:10.

RE-CROSS EXAMINATION.

When I gave Mr. Dorsey that affidavit about locking the elevator I was telling more about my habit, the way I usually did it. I forgot to tell him about sawing those planks that Saturday morning and the fact that I sawed those planks makes me know that I left the elevator unlocked. The elevator makes a good deal of noise when it starts and when it stops.

RE-DIRECT EXAMINATION.

I was on the second floor when all of these people came in the factory. Mr. Frank worked on his books until he got ready to go to Montags, I think it was about an hour. I checked freight with a one-legged drayman about 10:30; his wagon was right in front of the door.

N. V. DARLEY, sworn for the State.

My name is N. V. Darley. I am manager of the Georgia Cedar Company, a branch of the National Pencil Company. I have charge of the manufacturing and labor in the Forsyth Street plant. Mr. Sig Montag is my superior. Mr. Frank and I are of equal dignity in the factory. I was at the National Company's factory on Saturday, April 26th. I saw Mr. Frank and left about 9:40 in the morning. I was there Sunday morning at about 8:20. I saw Mr. Frank that morning. Observed nothing unusual when I first saw him. When we started to the basement I noticed his hands were trembling. I observed that he seemed still nervous when he went to nail up the back door. When we started down to nail up the back door he made some remark about having on new clothes or some more clothes and he pulled his coat off to keep it from getting soiled. When we left the station house and started towards Bloomfields he told me why he was nervous. He said that he had not had breakfast and didn't get any coffee and that they had rushed him by Bloomfields, carried him in a dark room and turned the light on and he saw the girl instantly and that was why he was nervous. The elevator was unlocked. I don't know where the key was. Newt Lee seemed to be thoroughly composed. Mr. Frank stated to me in the basement that he thought that the murder was committed in the basement. Mr. Frank stated that it looked easy for the staple to be pulled out and I agreed with him, because the staple looked black and it looked to me as if it had been pulled out before. On Monday Mr. Frank explained again about why he was nervous on Sunday morning. I heard him speak of the murder numerous times. When we started down the elevator Mr. Frank was nervous, shaking all over. I can't say positively as to whether his whole body was shaking or not, but he was shaking. Newt Lee seemed to be composed when I saw him at the factory. Mr. Frank could have driven the nails in the back door, but I thought I could do it with more ease. Mr. Frank looked pale Sunday morning. I think he seemed upset, but he did some things around the factory there that a man who was completely upset could not have

done, I don't think. When riding down to the police station from the pencil factory Mr. Frank was on my knee, he was trembling. I saw the financial sheet on Mr. Frank's desk. Mr. Frank picked it up in his hand. Gantt was at the factory three or four times after he was discharged. My recollection is that Frank said something about the financial sheet on Sunday. It was on May 3rd that Mr. Haas, the insurance man, asked that the factory be cleaned upon the Malsby side and on the other side. When my attention was called to it I noticed something that looked like blood with something white over it at the ladies dressing room on Monday morning.

CROSS EXAMINATION.

Mr. Quinn called my attention to the blood spots, Barrett called Quinn's attention to it. Barrett showed me some hair on a lever of the lathe. It was 20 or 30 feet from Mary Phagan's machine on the north side of the room. There were no blood spots on it. I don't think anybody could answer how many strands of hair Barrett found. They were wound around the lever. I don't think there were over 6 or 8 at the outside. It was pretty hard to tell the color. It is my understanding that Barrett has been doing most of the discovering done in the building. He has lost quite some time since the murder, and buys quite some extras and reads them. The white stuff practically hid the spots. It looked like there had been an attempt to hide them, but you could see the spots. It looked like the man who tried to hide them, if anybody did, made a smearing motion and left the spots showing. I saw no blood spots on Mary Phagan's machine. There are hundreds of pay envelopes distributed every week in the factory. The rule is that if a person goes outside of the factory and finds an envelope short we do not correct it. As the pay envelopes are distributed they take them and tear them off, just like this one. The employees take the money out and scatter the envelopes all over the factory. On the second floor where the metal room is is the main place where you find the pay envelopes. I was present on Sunday morning when the time slip was taken out. I was looking over Mr. Frank's shoulder. Mr. Frank run it down the number side. This time slip (Defendant's Exhibit "I") looks like the one. Mr. Frank looked down the number side and said it was all right and I verified it. I didn't notice between 9:32 and 10:29 if there was any punch, or between 11:04 and 12, or between 2:03 and 3:01. I identify this (Exhibit "1" defendant) by the numbers 6:01 and 6:32. I look over the financial sheets every Saturday afternoon. The factory week runs from Friday morning till Thursday night. The financial sheet is usually completed about 5:30 Saturday afternoon. The financial sheet shows the week's operation of the factory; the production of the factory, the different kinds of pencils that were produced. There are perhaps 75 or 80 different kinds, besides the special imprint pencils. Mr. Frank had to get all the data from the various departments of the factory, particularly the packing room. The cost of production was estimated most of the time as to the merchandise. The other things were real figures. Merchandise is bought by the month and

he had to figure it up at the end of the month to get the average. To arrive at the profit that was made during the week he took the actual value of the pencil and the amount of expenses that was paid out for material, labor, etc. He had to get all the data, all the reports and make all those calculations. It usually took him from about half past two or three o'clock on Saturday until five-thirty, and some times later. This financial sheet (Defendant's Exhibit "2") is in Frank's handwriting and is the one I saw on his desk Sunday morning. I left the factory at 9:40 and he hadn't started the financial sheet then. He usually started the financial sheet from 2:30 to 3 o'clock. I am familiar with Frank's handwriting. All of this financial sheet is in his handwriting. To get the figure 2765½, net 2719½, under material cost, he had to look at how many labels had been used, how many boxes, whether they were carton or plain ones, partition, rubbers, amount of lead used and amount of slate used. He got the reports that gave him that data from the different departments of the factory. To arrive at that result is quite a calculation. It is my opinion that it took a skillful, clear-headed man to calculate that. Yes, I am familiar with the elements that enter into that calculation. To arrive at the net results of the figures just named, you have to get the amount of rubbers, tips, lead, wrappers, labels, boxes, whether carton or plain boxes, partition, whether it is cheap or good lead. The 2765½ means 2765½ gross. Further on down you find the different items that make up that figure under the head of wrappers, leads, tips, etc. The next figure is under rubber, 720 gross at 6½c. Those figures come from the plugging department or he can get them from the goods as they are delivered to the packing room, by knowing the styles and numbers, you can tell whether it is a tipped or untipped pencil. You get that from the shipping room and the other from the metal room. He arrives at the figures on the reports turned in. It requires a good deal of calculation, mostly multiplying. The next figure is under tips, 1374 gross at ten cents. He gets that from the packing room. The ten cents means what the tips cost to produce. That's a stipulated price. The next heading is lead, 747 gross at 15c. and 1955 gross at ten cents. He has to go through these reports the same way except he doesn't have to work the cost of that, it's taken care of in the account. He has to arrive at the number of gross, but the cost is fixed. The next item is supplied at 5c. per gross, boxes 3771 at 2c., assortment boxes 279 at 10c., wrappers 2535 at 1c. He gets those reports from the boxes of the pencils in the packing room. He gets the reports as to the rubbers and the labels from the packing room. The cost per gross is fixed, but he has to figure out the quantity. The next item is assortment boxes, wrappers, skeletons. The next item, cartons. The next item is pay roll, Bell Street. The next, slats from the slat mills. As the slats are delivered from the slat mill, a report comes with it, and those reports are taken at the end of the week and added up. There are about five of those shipments during the week. He has to take the data that accompanys each shipment and adds all that up at the end of the week. The next item is "pencils packed," (top of sheet). There are 24 itemized here, and the word

"jobs" implies I don't know how many different kind of jobs. There are 24 different kind of pencils. He puts them there as having been produced that week. He got the reports as to the quantity of each kind of pencil and had to tabulate all those reports and arrive at the total of each kind. No, I don't think he had to figure out the cost of production of each kind, but he figures the quantity of each kind of pencil and shows its value on the sheet. Starnes and Black and Anderson and Dobbs were there on Sunday morning. We went all over the factory. I don't remember about hearing of any blood being found on Sunday at all. There was a great deal of excitement there that morning. We see spots all over the factory floor. We have varnish spots, and people get their fingers cut, we have every color spots you can think of. I have been working in factories for 24 years. It is a frequent occurrence in establishments where a large number of ladies work that you will see blood spots around dressing rooms. I have seen them a good many times. I have seen it at this factory. Mr. Frank had on a brown suit on Saturday and Monday. On Sunday he had a different suit on. I never noticed any scratches, marks or bruises on Mr. Frank on Sunday. There was a little girl in Mr. Frank's office on Saturday morning, by the name of Miss Mattie Smith, and her sister-in-law's time was wrong and Mr. Frank told her to wait a few minutes and he would straighten it out for her. She had been paid $3.10 too much, and she gave me back the money when she found it was wrong and I gave it to Mr. Frank and he said he was glad because it balanced his cash. She then started out of the factory and got to the stairway and she came back again and said that her time was wrong the other way, and I said "Little girl will it do all right to straighten it Monday," and she said "Yes." I then asked her how was her father, and she said, "My father is dying, I think." Then she spoke to me about getting some assistance from the office for burial expenses, and she commenced to cry and I walked down the steps with her to the front door. That was about 9:20. Mr. Frank stayed at the factory until 9:40, when we left together. We went on up to the corner of Hunter and Forsyth, took a drink of sodawater at Cruickshank's at the corner of Forsyth and Hunter. He left me then and started towards Montag's. That's the last I saw of him until Sunday morning. The elevator box was unlocked Sunday morning, and anybody could have pulled it open and started the elevator. The elevator makes some noise. It is driven by a motor. It makes more noise when it stops at the bottom than when it starts. There is nothing to stop it except when it hits the bottom. I have seen these cords that we tie up slats and pencils with in every part of the factory. I have raised sand about finding them in the basement; they go down in the garbage. There are several truck loads of waste and debris every day. The general cleaning up of the premises was had on Tuesday after the murder. The factory is five stories high, between 150 and 200 feet in length and 75 or 80 feet wide. It is an extremely dirty place. In some places the floor is gummed an inch thick, and in some parts of the metal room it is one-eighth of an inch thick, it might not average that all over. It is always dark on the first floor, through the hall toward the elevator.

On a cloudy day it is very dark. We keep a light burning there most of the time. I couldn't say whether we had cleaned up all the trash and rubbish around the factory, because there are corners and crevices which we don't usually get to. Saturday, April 26, was a dark, bad, misty day, until about 9:30. It was cloudy most of the day. It was dark there around the elevator on the first floor and we had big heavy boxes piled up there. One of them must have been almost as large as a piano box. If a man got between those boxes, we would have had to hunt to find him. It is very dark on the second floor between the clock and the metal room. It is dark behind the ladies dressing room and on the side next to the ladies toilet. As you go to the stairs from the metal room, it is very dark. A person sitting at Mr. Frank's desk in his office could not see anyone coming up those stairs. It would be impossible to see anyone coming up those steps from anywhere in Mr. Frank's inner office, you would have to go outside of it. There is no lock on the metal room doors. In the metal room there are a great many vats and a great many boxes and things containing stock and goods just south of the ladies dressing room. It is piled up very bad back there. Averaged anywhere from 2 to 6 or 8 feet in height. It isn't used at all except for storage. The metal room contains three or four large vats that have got lids on them. They are shallow, but they are large inside. They are about a foot and a half deep. Nobody is supposed to be in any part of the building on Sunday, that is the only time we don't have a watchman. The factory is supposed to be locked entirely. The elevator steel cables have some slack in them. It isn't like a stiff iron in them. It would shake when you catch hold of it. There are two cables, you pull the right one to come down and the left one to go up. You can catch it and shake it in your hand. Yes, Mr. Frank is a small, thin man, about 125 or 130 pounds. Yes, Mr. Dorsey served a subpoena on me to come down to his office. I didn't know that he did not have any right to subpoena me. Yes, I thought I was being subpoenaed to come into court. They served two subpoenaes on me and sent for me one time. The first time I went there, Chief Lanford, Mr. Dorsey, Mr. Stephens and the stenographer was there. They all asked me questions. One would ask me a question and before I got that answered, another would ask me a question. The next time I went there, Mr. Dorsey, Mr. Starnes, Mr. Campbell and the stenographer were there. Mr. Dorsey did all the questioning this time. When Mr. Frank was engaged on his work in the factory he was very intent on his work, very earnest and industrious. I don't think a day passed at the factory that Mr. Frank did not get nervous. When anything went wrong he would wring his hands and I have seen him push his hands through his hair. When things went wrong it would upset him. If anything out of the ordinary happened I have seen him a thousand times, I suppose, rub his hands. At a factory like this things don't usually go right all day, there is something wrong all the time. When anything went wrong it rattled him and he would frequently call on me to straighten it out. He would show the most nervousness when he would go over to Montag's with the mail, and he would raise sand about something and he would come back very nervous. If

Mr. Frank saw anything going wrong inside the factory, he would refer the matter to me. I never saw Mr. Frank speak to Mary Phagan. I don't know whether he knew her or not. I didn't know we had a girl by that name in the factory until I found it out afterwards. The two men working up in the fourth floor all day Saturday could have come to the second floor into the metal room and down into the basement if they wanted to, they had the whole run of the factory. Yes, I have seen all kinds of papers down in the basement. The paper that note is written on is a blank order pad. It is either the carbon or white sheet, one is white and one is yellow. That kind of paper is liable to be found all over the building for this reason, they write an order, and some times fail to get the carbon under it, and other times they have to change the order and tear it out and throw it in the waste basket in the office and from there it gets into the trash. That kind of little pad is used all over the factory. The foreladies make their memorandum on that kind of tablet. You will find them all around. It is one of the biggest wastes around the place. They are all over the building, and any man that worked around the factory or ran the elevator or swept up the different floors would be more likely to come across them than any one else, because they are thrown on the floor. There was an order to keep the clock door locked, but on this occasion the key was lost and the clock door was open. When I got there Sunday morning the clock door was unlocked. Mr. Frank could not have unlocked it because the key was lost. With the clock door unlocked, any one who understands the clock, could have punched for all night in five or ten minutes. I made the same mistake Mr. Frank made in thinking that all the punches had been made all right. I looked over the factory at noon to-day and compared it with some points on this picture (Exhibit "A" for State). This big space in the cellar appears to be short. Those steps in the cellar are much longer in reality. The platform itself is about 15 feet long, and the incline is 17 feet, making 32 feet the length of it. The distance between the walls of Mr. Frank's office and the elevator shaft is 5 feet to 5½ inches. The elevator shaft is ten feet, but on the picture the space between the elevator shaft and Mr. Frank's office looks almost as wide as the elevator shaft itself. One is ten feet and the other is 5½. As to what occasions I recall seeing Mr. Frank nervous, I recall once that he came in one afternoon on a street car when it ran over a little child. He came in about 2:30 and he couldn't work any more on his books until a quarter after four. He trembled just as much on that occasion as he did on the Sunday after Mary Phagan was killed. Another time I remember when I went over to the main factory and he and Mr. Montag had a fuss on the fourth floor. Mr. Montag hollered at him considerably and he was very nervous the rest of the evening, he shook and trembled. He says "Mr. Darley I just can't work," and some of the boys told me he took some spirits of ammonia for his nerves. Everybody was excited in the factory that morning after Mary Phagan was killed. Starnes and Black and Rogers were there and it seems like they were all excited. Looked like everybody was worried. As to another mistake in the picture (State's Exhibit A), the bottom of the

ladder in the basement is much closer to the elevator than what is shown on the picture. It is about 6 feet. On the picture it looks to be about 10 feet and the toilet in the basement is closer to the wall than the picture shows, it is right up against the wall. The picture doesn't show the Clarke Woodenware partition back of the elevator. The door to the Clarke Woodenware Company also is closer to the elevator than the picture shows. On the stairs from the first to the second floor there are double doors instead of single doors as shown on the picture. The picture shows up Frank's inner office a good deal larger than the other office. As a matter of fact the outer office is larger. The outer office is 12 feet 4 inches wide. The inner office ten feet 3. The picture shows a great big wide place for a door between the inside office and the outside office, making it look like a double door. That is a representation to show a full view from Frank's desk into the hall, as a matter of fact it is a single door, standard size. It looks like it was drawn to open up a space to give as much view as possible out into the hall. The safe is shown to be about half its real size on this picture. On the picture it is shown to be about one-third the width of the door, as a matter of fact it is about the same size. When the safe door is open, it shuts off three-fourths of the view from Frank's office out into the hall, unless you stand up high enough to look over it. The picture also shows the south wall of the outer office on a line with the clock. The picture doesn't show up the wardrobe in the inner office, nor the two cabinets that are in there. I don't think it is a very accurate picture. It opens up Frank's inner office a whole lot better than it really opens up. Sitting at Frank's desk and looking out through the door towards the clock, in reality you have a looking space of only 25 inches. You can just see about four numbers on clock number 2. You could not see anywhere near the stair case, or in the neighborhood of it.

RE-DIRECT EXAMINATION.

I felt nervous from the time they told me the girl was dead, until I left the building. I was not trembling, I was simply excited and worried. Well, Starnes was nervous. He looked as if he were worried. He seemed nervous both in talk and manner. I can say the same thing of the rest of the officers who were there. Mr. Frank was more nervous than the others. The men were all about as nervous on Monday and Tuesday. Everybody seemed to be in a turmoil and shaking. Mr. Holloway and Mr. Schiff were shaking. I noticed Mr. Schiff's hands shaking Monday morning. Mr. Holloway was about in the same shape. Mr. Frank was very nervous Tuesday after the extra came out saying that they were going to arrest him. That was about 15 or 20 minutes before they arrested him. As to who gets up the data for Mr. Frank for the financial sheets, Mr. Loeb some times, and Mr. Gantt used to get up some, and Mr. Schiff gets it up some times. Mr. Frank got it up himself, some times. No, I do not know that Mr. Schiff furnished it to him all the time. I never noticed whether Lee was nervous or not at any time, but of course, he looked bothered and worried. Mr. Frank told me that the slip he took out

of the clock Sunday morning had been punched regularly. I made the same mistake standing right there by his side. I didn't see Mr. Frank date the slip. It ought to have been dated the 26th. The slip I saw didn't have any time on it except the watchman's time. I don't know whether I would know it or not, to identify. The slips are not made in duplicate. As to whether there is any mark on the slip to enable any one to identify it, as the one taken out that night, my memory is that it was started at 6:01 or 6:32. Of course nobody could tell who punched the clock, one man's punch is just like another. That diagram or picture (State's Exhibit A) is a fair representation of the building as a whole, it is not a fair representation of the interior. I never knew there were any stairs in the basement until this matter came up. They are never used to my knowledge. There is a way of closing the door in rear of second floor from upstairs. The regular place of keeping these order blank books is in the outer office. There is no regular place in the basement to keep paper, but it is thrown out in the waste basket and gets down in the trash. There is no use for that paper anywhere but in the office, but that doesn't prevent it from being scattered around. I have scratch pads of that shape scattered around even in the basement. That scratch pad is used all over the factory, everywhere there is a foreman or a forelady. No, not in the area around the elevator there. The trash is carried downstairs right in front of the boiler. Sometimes if they are in a hurry they leave it around the elevator for a little while, and when I go down I make the negro move it to the boiler. It is usually burned. Some of it may stay there for a week, some of it burned right away.

RE-CROSS EXAMINATION BY DEFENDANT.

As to people being nervous, Montag and Frank merely had some words when Frank became so nervous, Schiff was trembling Monday, Holloway also, I noticed Miss Flowers began to cry and scream and I had to go in there and get hold of her myself. That was Tuesday morning. The whole factory was wrought up. I couldn't hardly keep anybody at work. I had to let them go on Monday, and I wished I had let them go for the rest of the week, for I couldn't get any work out of them. I wouldn't say that I couldn't get any work out of Christopher Columbus Barrett, since, but he has lost a good deal of time. I would have to look to the pay roll to tell.

W. F. ANDERSON, sworn for the State.

I was at police headquarters Saturday, April 26. I got a call from the night watchman at the pencil factory. He said a woman was dead at the factory. I asked him if it was a white woman or a negro woman. He said it was a white woman. We went there in an automobile, shook the door and Newt Lee came down from the second floor and carried us back to the ladder that goes down through the scuttle hole. About 3:30 I called up Mr. Frank on the telephone and got no answer. I heard the telephone rattling and buzzing.

I continued to call for about five minutes. I told Central that there had been a girl killed in the factory and I wanted to get Mr. Frank. I called Mr. Haas and Mr. Montag, too. I got a response from both, I think a lady answered the telephone. I got them in a few minutes. I tried to get Mr. Frank again about four o'clock. Central said she rang and she couldn't get him. There was some blood on the girl's underclothes.

CROSS EXAMINATION.

There was a wound on the left-hand side of the girl's head. The blood was dried up. It was wet right next to the skin. Lee said over the telephone that it was a white girl. It took us about three minutes to get to the factory from the police station, just as quick as the automobile could get us there. We got there inside of five minutes after I received his telephone message. Lee had a smoky lantern. You couldn't see very far with it. It was smoked up right smart. Lee said he had been to the closet and had his lantern sitting down there and he looked over and saw the lady. He said he saw her while he was standing up. I said he couldn't see her. You could see the bulk of anything that far, but you couldn't tell that far whether it was a person. He told me when I first got him that he had his lantern sitting down right in front of him. The body was lying sort of catecornered and on the left side of the body I saw a number of tracks which lead from the body to the shaving room. There is an opening from the place where the body lay into the shaving room. I found a pencil down there. There are plenty of pencils and trash in the basement. The trash was all up next to the boiler.

H. L. PARRY, sworn in behalf of the State.

I reported the statement of Leo M. Frank before the coroner's jury. I have been a stenographer for thirty years and considered an expert.

CROSS EXAMINATION.

Newt Lee was asked the following questions and gave the following answers at the coroner's jury: "Q. Had you ever seen him change that before? A. Well, he put the tape in once before. Q. When was that? A. I don't know, sir, when it was, it was one night. Q. How long did it take him the first time you ever saw him put the tape on? A. I never paid any attention to him. Q. Well, about how long did it take him, five minutes? A. No, sir, it didn't take him that long. Q. Did it take him a minute? A. I couldn't tell exactly how long. Q. How long did it take the other night, on Saturday night? A. Well, it took him a pretty good little bit, because he spoke about it. He said it's pretty hard, you know, to get on." I don't know whether he swore anything else on that particular subject without examining the record.

G. C. FEBRUARY, sworn for the State.

I was present at Chief Lanford's office when Leo M. Frank and L. Z. Rosser were there. I took down Mr. Frank's statement stenographically. I don't remember Frank's answers in detail, Mr. Rosser was looking out of the window most of the time. He didn't say anything while I was in there. This (Exhibit B, State), report is correct report of what Mr. Frank said. It was made on Monday, April 28th.

CROSS EXAMINATION.

I believe Mr. Rosser and Mr. Frank were in the room when I came in. It was sometime in the forenoon. I have never been a court stenographer except in Recorder's court. I am Chief Lanford's private secretary. Mr. Black was in there during the latter part of Mr. Frank's statement. Chief Lanford asked Mr. Frank if he changed clothes. He showed part of his shirt and opened his trousers. He showed his clothing to Chief Lanford at the end of the statement. I wrote the statement out in longhand the same day. I don't remember exactly when.

ALBERT McKNIGHT, sworn for the State.

My wife is Minola McKnight. She cooks for Mrs. Selig. Between 1 and 2 o'clock on Memorial Day I was at the home of Mr. Frank to see my wife. He came in close to 1:30. He did not eat any dinner. He came in, went to the sideboard of the dining room, stayed there a few minutes and then he goes out and catches a car. Stayed there about 5 or ten minutes.

CROSS EXAMINATION.

Mrs. Selig and Mrs. Frank were present when Mr. Frank came in. I was in the cook room. There is a swinging door between the dining room and the cook room. The dining room door was open. The door swings back and forth, but they don't keep it shut. You can see from the kitchen into the dining room. You can look in the mirror in the corner and see all over the dining room. I looked in the mirror in the corner and saw him. You can look in that mirror and see in the sitting room and in the dining room. I have no idea how big the kitchen or dining room is. I was never in the dining room in my life. I was sitting at the back door in the kitchen, at the right side of the back door, up against the wall. Minola went into the dining room, and stayed a minute or two, no more than two minutes. She came back into the kitchen. I don't know whether the other folks ate dinner or not, I did not see Mr. Selig. I came to the house from my house in the rear of 318 Pulliam Street. After coming to the sideboard Mr. Frank went into the sitting room where Mr. Selig was. I didn't see Mr. Selig, but heard him talking. I told about Mr. Frank not eating after I came back from Birmingham, I told it to Mr. Craven of the Beck & Gregg Company. It was before Minola went down to the jail.

Mr. Starnes, Mr. Campbell, Mr. Morse, Mr. Martin and Mr. Dorsey all talked to me. I didn't go down to see Minola at the station house. I didn't see Mrs. Frank or Mrs. Selig that Saturday through the mirror. I didn't keep my eye on the mirror all the time. I couldn't tell who was in the dining room without looking in the mirror. Mr. Frank got there not later than 1:30. Mr. Frank came on back to Pulliam Street and caught the Georgia Avenue car at the corner of Georgia Avenue, and Pulliam Street. I am certain that he caught the Georgia Avenue car at Pulliam Street and Georgia Avenue.

RE-DIRECT EXAMINATION.

The Selig residence is on East Georgia Avenue between Pulliam and Washington Streets. I don't know exactly the nearest place for Mr. Frank to have gotten on the car, Washington Street or Pulliam Street. I suppose Pulliam Street is nearer to town than Washington. I certainly saw Mr. Frank that day, from the kitchen where I was sitting.

MISS HELEN FERGUSON, sworn for the State.

My name is Helen Ferguson, I worked at the National Pencil Company on Friday the 25th. I saw Mr. Frank Friday, April 25, about 7 o'clock in the evening and asked for Mary Phagan's money. Mr. Frank said "I can't let you have it," and before he said anything else I turned around and walked out. I had gotten Mary's money before, but I didn't get it from Mr. Frank.

CROSS EXAMINATION.

When I got Mary's money before I went up there and called my number and called her number, and I got mine and hers. I didn't ask the man that was paying off this time to let me have it. I don't remember whether Mr. Schiff was in the office or not when I asked Mr. Frank for Mary's money. Some of the office force were there, but I can't recall their name. I worked in the metal department about two years. I never saw little Mary Phagan in Mr. Frank's office. I don't think Mr. Frank knew my name, he knew my face. It has been some time since I asked for Mary's pay by number. I do not believe that I ever saw Mr. Frank speak to Mary Phagan.

RE-DIRECT EXAMINATION.

I don't know who paid off on Friday, April 25th.

R. L. WAGGONER, sworn for the State.

I am a city detective. On Tuesday, April 29th, from ten thirty until a little after 11 in the morning I was in front of the pencil factory on the other side of the street. I would continually see Mr. Frank walk to the window and look down and twist his hands when he would come to the window looking down on the sidewalk. He did this about 12 times when I was there in about

30 minutes. I was in the automobile with Mr. Frank and Mr. Black and his leg was shaking. He was under arrest at the time.

CROSS EXAMINATION.

I don't know what he was doing in the office. I saw some other people up there that I didn't recognize. I was sent to the pencil factory to notice Mr. Frank and the pencil factory. I thought Mr. Frank would be arrested.

J. L. BEAVERS, sworn for the State.

I am Chief of police of the City of Atlanta. I was at the pencil factory on Tuesday, April 29th, and saw what I took to be a splotch of blood on the floor right near this little dressing room on office floor, seemed to be as big as a quarter in the center and scattered out in the direction of this room near the door. There was one spot and some others scattered around that.

CROSS EXAMINATION.

It may have been Monday that I was at the pencil factory. I don't know whether it was blood or not. It looked like blood.

R. M. LASSITER, Sworn for the State.

I am a city policeman. On Sunday morning, April 27th, I found a parasol in the bottom of the elevator shaft. It was lying about the center of the shaft. I also found a ball of rope twine, small wrapping twine, and also something that looked like a person's stool.

CROSS EXAMINATION.

I noticed evidence of dragging from the elevator in the basement. As I passed the rear door at 12 o'clock, the door was closed. The umbrella was not crushed. I found it between 6 and 7 o'clock in the morning. The elevator comes down there and hits the ground plump at the bottom of the basement.

RE-DIRECT EXAMINATION.

I don't know whether the elevator shaft has a cement bottom or not. There is a whole lot of trash at the bottom.

L. O. GRICE, Sworn for the State.

My name is L. O. Grice. I was at the National Pencil company's place on Sunday morning, April 27th. A small sized man, defendant here, attracted my attention, on account of his nervousness.

CROSS EXAMINATION.

I was called as a witness in this case one week after it started. I told some of my friends about Mr. Frank's nervousness and they advised me to go to Dorsey. I never knew or saw Mr. Frank before. When we were told of how the little child was murdered, it excited me some.

RE-DIRECT EXAMINATION.

I don't recall trembling any. I am pretty sure I didn't because my friend that I went to Opelika with that morning suggested that I was trembling when I went through there, and I told him I was not. He was not there when I went through the factory and when I told him about it he said I bet you were scared. He walked around this way a little bit. He was kind of shaking like that (illustrating). His fingers were trembling.

MELL STANFORD, Sworn for the State (recalled).

The door in the rear part of the factory on the second floor on Friday evening was barred. There is no way in the rear of the building to come down to the second floor when the door is barred except the fire escape, and you have to be on office floor to undo the door. The area around the elevator shaft on the first floor near the hole and radiator was cleaned up after the murder. It was the early part of the week after the murder.

CROSS EXAMINATION.

I didn't clean it myself. I saw it cleaned. I passed by as it was being cleaned up.

W. H. GHEESLING, Sworn for the State.

I am a funeral director and embalmer. I moved the body of Mary Phagan at 10 minutes to four o'clock April 27, in the morning. The cord (Exhibit C, State) was around the neck. The knot was on the right side of the neck and was lying kind of looped around the head. It wasn't very tight at the time I moved it. There was an impress of an eighth of an inch on the neck. The rag (Exhibit D—State) was around her hair and over her face. The tongue an inch and a quarter out of her mouth sticking out. The body was rigid, looking like it had been dead for some time. My opinion is that she had been dead ten or fifteen hours, or probably longer. The blood was very much congested. The blood had settled in her face because she was lying on her face. Blood begins to settle at death or a very few minutes after death. After Dr. Hurt examined her nails, I did. I found some dirt and dust under the nails. I discovered some urine on her underclothes and there were some dry blood splotches there. The right leg of the drawers was split with a knife or torn right up the seam. Her right eye was very dark; looked like it was hit

before death because it was very much swollen; if it had been hit after death there wouldn't have been any swelling. I found a wound 2¼ inches on the back of the head. It was made before death because it bled a great deal. The hair was matted with blood and very dry. If it had been made after death, there would have been no blood there. There is no circulation after death. The skull wasn't crushed; the scalp was broken. The indication was that it was made before death. There was a scar over each eye about the size of a dime. I didn't notice any scratches on her nose. I can't state whether the defendant ever looked at the body or not. There was some discharge on her underclothes which was very dry and if she had been dead a short time, it would have been wet yet.

CROSS EXAMINATION.

I judge the length of time the corpse had been dead by the rigor mortis. This is very indefinite at times. It begins before death. If she died of strangulation, I would expect rigor mortis to begin within an hour. I have never had any experience about as a case of strangulation so as to determine when rigor mortis began and when it broke. There is no certainty about how long a corpse is dead. All the blood was dry when I examined the body. Mr. Rogers and Mr. Black came with Mr. Frank and asked me to take him back to where the girl was. I took them back there, pulled a light, pulled the sheet back, and moved the revolving table and walked out between them. Mr. Frank was near the right-hand going in. Mr. Black was at the left. I took a half gallon of blood from the little girl's body, enough to clear up the face and body. I injected one gallon of the formula into the corpse. Formaldehyde is a constituent part of the embalming fluid used. I prepared the little girl properly for burial. There was no mutilation at all on the body. I judge she died of strangulation because the rope was tight enough to choke her to death and her tongue being an inch and a quarter out of the mouth, showed she died from strangulation.

RE-DIRECT EXAMINATION.

I don't think the little girl lost much blood.

DR. CLAUDE SMITH, Sworn for the State.

I am physician and City Bacteriologist and Chemist. These chips (Exhibit E—State) appear to be the specimen which the detectives brought to my office and which I examined. They had considerable dirt on them and some coloring stain. On one of them I found some blood corpuscles. I do not know whether it was human blood. This shirt (Exhibit E for State) appears to be the same shirt brought to my office by detectives which I examined. I examined spots and it showed blood stain. I got no odor from the arm pits that it had been worn. The blood I noticed was smeared a little on the inside in places. It didn't extend out on the outside. The blood on shirt was somewhat

on the inside of the garment high up about the waist line which to my mind could not have been produced by turning up the tail.

CROSS EXAMINATION.

I found grit and stain on all of the chips. I couldn't tell the one that I found blood on. I did the work in the ordinary way. The whole surface of the chips was coated with dirt. I couldn't tell whether the blood stain was fresh or old. I have kept blood corpuscles in the laboratory for several years. I found probably three or four or five blood corpuscles in a field. I don't know how much blood was there. A drop or half drop would have caused it, or even less than that. Rigor mortis begins very soon after death. Sometimes starts quicker, but usually starts very soon. I could not say when rigor mortis would end.

DR. J. W. HURT, Sworn for the State.

I am County Physician. I saw the body of Mary Phagan on Sunday morning, the 27th of April. She had a scalp wound on the left side of her head about 2½ inches long, about 4 inches from the top to the left ear through the scalp to the skull. She had a black contused eye. A number of small minor scratches on the face. The tongue was protruding about a half an inch through the teeth. There was a wound on the left knee, about 2 inches below the knee. There were some superficial scratches on the left and right elbow. There was a cord around the neck and this cord was inbedded into the skin and in my opinion she died from strangulation. This cord (Exhibit "C" for State) looks like the cord that was around her neck. There was swelling on the neck. In my opinion the cord was put on before death. The wound on the back of the head seemed to have been made with a blunt-edged instrument and the blow from down upward. The scalp wound was made before death. It was calculated to produce unconsciousness. The black eye appeared to have been made by some soft instrument in that the skin was not broken. I think the scratches on the face were made after death. I examined the hymen. It was not intact. There was blood on the drawers. I discovered no violence to the parts. There was blood on the parts. I didn't know whether it was fresh blood or menstrual blood. The vagina was a little larger than the normal size of a girl of that age. It is my opinion that this enlargement of the vagina could have been produced by penetration immediately preceding death. She had a normal virgin uterus. She was not pregnant. I made no examination of the blood vessels of the uterus or womb.

CROSS EXAMINATION.

The body looked as if it had been dragged through dirt and cinders. It is my impression that she was dragged face forward. If she had fallen on the corner of the floor that was sharp edged, or the corner of an elevator

shaft with an edge, it might have produced the wound. I do not know of the kind of instrument that produced the wound. There was no contusion on the inside of the skull, but the skull wasn't fractured. Neither the brain nor the meningis were affected. There was a little contusion on the inner lining of the skull. There was no bleeding on the brain tissues. I don't know whether it would produce unconsciousness or not. I was never asked before to examine the inside of anybody's skull to determine the fact whether death or unconsciousness resulted from the wound. It is my impression that this lick did produce unconsciousness, but I won't swear it, I don't know. The hemorrhage which we discovered in the skull caused no pressure on the brain. That was no sign that unconsciousness resulted. Where a person is strangled to death the lungs ought to show congestion. I never examined this girl's lungs. When I saw the body on April 27th I gave it as my opinion that she had been dead from 16 to 20 hours at 9 o'clock Sunday morning. Rigor mortis was complete. It is a very variable thing. I couldn't tell whether the blood on her underclothes was menstrual blood or not. The hymen was not intact, and I was not able to say when this hymen was ruptured. I saw no indication of an injury to the hymen. The appearance of the blood on the parts was characteristic of a menstrual flow. There was no laceration on the vagina, and no mutilation on this girl's body except those wounds on the face, head and legs. The size of the vagina is no indication of anything except the anatomy and the natural build of the person. It is no indication of rape. I found no outward signs of rape. I have formed no opinion whether this little girl was raped or had ever had intercourse with anybody. There was no external marks of violence. I told Col. Rosser at the Coroner's inquest that this little girl had her monthly period on, but I got that from somebody else. I did not conclude that from my examination. The monthly period causes some inflammation and congestion in the blood vessels of the ovaries and uterus. The vagina itself might have some different appearance. I was present when Dr. Harris made the post mortem examination of this girl. Cabbage is digested better by some people than others. It depends on the individual very much. It is considered hard to digest. It depends largely on mastication. You can chew up so thoroughly that it would go down into the stomach almost a liquid, but it would not be digested until the stomach took up that chewed mass. It would take a much longer time to digest and assimilate unmasticated cabbage than if it had been thoroughly chewed. It takes about 3½ hours to digest cabbage properly masticated, and it would take longer if the cabbage had been taken into the stomach actually or practically whole. Digestion continues partially in unconsciousness. It is a guess to say whether the girl was conscious or not. I would not undertake to give an opinion how long she remained unconscious. I would not undertake to give an opinion and don't know of any way of telling ten days after death how long a distended condition of the vagina existed before death.

RE-DIRECT EXAMINATION.

I could not detect the hymen from a digital and occular examination. Ordinary normal menses would produce a dilation of the blood vessels in the womb. The blood, flowing over the hymen I think would produce a little inflammation at the hymen, but if the hymen was broken down, I don't know that menstruation would have any affect upon the hymen. If the menstruation was about off, then I would say that any undue excitement might produce the flow again, or increase the flow that was already there. The contents of this bottle didn't (Exhibit "G"—State), stay in the stomach very long.

RE-CROSS EXAMINATION.

I wouldn't undertake to say how long that cabbage (Exhibit "G"—State) had been in the child's stomach. A blow on the back of the head might blacken one or both eyes.

RE-DIRECT EXAMINATION.

I think excitement could produce flow from the uterus. I don't think it would cause any discoloration of the walls of the vagina except from the blood.

DR. H. F. HARRIS, Sworn for the State.

I am a practicing physician. I made an examination of the body of Mary Phagan on May 5th. On removing the skull I found there was no actual break of the skull, but a little hemmorhage under the skull, corresponding to the point where the blow had been delivered, which shows that the blow was hard enough to have made the person unconscious. This wound on the head was not sufficient to have caused death. I think beyond any question she came to her death from strangulation from this cord being wound around her neck. The bruise around the eye was caused by a soft instrument, because it didn't show the degree of contusion that would have been produced by a hard instrument. The outside cuticle of the skin wasn't broken. The injury to the eye and scalp were caused before death. I examined the contents of the stomach, finding 160 cubic centimeters of cabbage and biscuit, or wheaten bread. It had progressed very slightly towards digestion. It is impossible for one to say absolutely how long this cabbage had been in the stomach, but I feel confident that she was either killed or received the blow on the back of the head within a half hour after she finished her meal. I have some cabbage here from two normal persons. Here was same meal taken of cabbage and wheaten bread by two men of normal stomach, and contents taken out within an hour. We found there was very little cabbage left. I made an examination of the privates of Mary Phagan. I found no spermatozoa. On the walls of the vagina there was evidences of violence of some kind. The epitheleum was pulled loose, completely detached in places, blood vessels were dilated immediately beneath the

surface and a great deal of hemorrhage in the surrounding tissues. The dilation of the blood vessels indicated to me that the injury had been made in the vagina some little time before death. Perhaps ten to fifteen minutes. It had occurred before death by reason of the fact that these blood vessels were dilated. Inflammation had set in and it takes an appreciable length of time for the process of inflammatory change to begin. There was evidence of violence in the neighborhood of the hymen. Rigor mortis varies so much that it is not accurate to state how long after death it sets in. It may begin in a few minutes and may be delayed for hours. I could not state from the examination how long Mary Phagan was dying. It is my opinion that she lived from a half to three-quarters of an hour after she ate her meal. The evidence of violence in the vagina had evidently been done just before death. The fact that the child was strangled to death was indicated by the lividity, the blueness of the parts, the congestion of the tongue and mouth and the blueness of the hands and fingernails. The lungs had the peculiar appearance which is always produced after embalming when formaldehyde is used. I am of the opinion that the wound on the back of the head could not have been produced by this stick (Exhibit 48 of Defendant). I made a microscopic examination of the vagina and uterus. Natural menses would cause an enlargement of the uterus, but not of the vagina. In my opinion the menses could not have caused any dilation of the blood vessels and discoloration of the walls. From my own experiments I find that the behavior of the stomach after taking a small meal of cabbage and bread is practically the same as taking some biscuit and water alone. I examined Mary Phagan's stomach. It was normal in size, normal in position, and normal in every particular. I made a microscopic examination of the contents in Mary Phagan's case. It showed plainly that it had not begun to dissolve, or only to a very slight degree, and indicated that the process of digestion had not gone on to any extent at the time that this girl was rendered unconscious. I found that the starch she had eaten had undergone practically no alteration. The contents taken from the little girl's stomach was examined chemically and the result showed that there were only slight traces of the first action of the digestive juices on the starch. It was plainly evident that none of the material had gone into the small intestines. As soon as food is put in the stomach the beginning of the secretion of the hydrochloric acid is found. It is from the quantity of this acid that the stomach secretes that doctors judge the state and degree of digestion. In this case the acid had not been secreted in such an excess that any of it had become what we call free. In this case the amount of acid in this girl's stomach was combined and was 32 degrees. Ordinarily in a normal stomach at the end of an hour it runs from 50 to 70 or 80. I found none of the pancreatic juices in the stomach which are usually found, about an hour after digestion starts.

CROSS EXAMINATION.

I don't remember when Mr. Dorsey first talked to me about making this autopsy. As long as the heart was beating you could have put a piece of rope

around the neck of this little girl and produced the same results as I found. I took about five or six ounces altogether out of the stomach. It was all used up in making my experiments. I know of no experiments made as to the effect of gastric juices where the patient is dead. The juices of the body after death gradually evaporate. The chemical analysis of each cabbage varies, not only in the plant but from the way it is cooked. It is a very vague matter as to what influences may retard digestion. Every individual is almost a law unto himself. To a certain extent different vegetables affect different stomachs different ways, but the average normal stomach digests anything that is eaten within reason. Some authorities claim that exercise will retard digestion. I don't know that mental activity would have very much effect in retarding the digestion. It is the generally accepted opinion that food begins to pass out of the stomach through the pyloris in about a half an hour. A great many things pass out of the stomach that are not digested. The juices of the stomach make no change in them. The stomach does not emulsify a solid. I never knew a normal man who could digest a solid. The science of digestion is rather a modern thing. I did not call in any chemist in making this examination. I said it was impossible for any one to say absolutely how long the cabbage had been in the stomach of Mary Phagan before she met her death, not within a minute or five minutes, but I say it was somewhere between one-half an hour and three-quarters. I am certain of that. Of course, if digestion had been delayed this time element would change. The violence to the private parts might have been produced by the finger or by other means, but I found evidence of violence. It takes a rather considerable knock to tear epithelium off to the extent that bleeding would occur. I found the epithelium completely detached in places and in other places it was not detached. A digital examination means putting the finger in. The swelling and dilation of the blood vessels could be seen only with a microscope. It is impossible to say how much they were swollen. A scalp wound is very prone to bleed.

C. B. DALTON, Sworn for the State.

I know Leo M. Frank, Daisy Hopkins, and Jim Conley. I have visited the National Pencil Company three, four or five times. I have been in the office of Leo M. Frank two or three times. I have been down in the basement. I don't know whether Mr. Frank knew I was in the basement or not, but he knew I was there. I saw Conley there and the night watchman, and he was not Conley. There would be some ladies in Mr. Frank's office. Sometimes there would be two, and sometimes one. May be they didn't work in the mornings and they would be there in the evenings.

CROSS EXAMINATION.

I don't recollect the first time I was in Mr. Frank's office. It was last fall. I have been down there one time this year but Mr. Frank wasn't there. It was Saturday evening. I went in there with Miss Daisy Hopkins. I saw

some parties in the office but I don't know them. They were ladies. Sometimes there would be two and sometimes more. I don't know whether it was the stenographer or not. I don't recollect the next time I saw him in his office. I never saw any gentlemen but Mr. Frank in there. Every time I was in Mr. Frank's office was before Christmas. Miss Daisy Hopkins introduced me to him. I saw Conley there one time this year and several times on Saturday evenings. Mr. Frank wasn't there the last time. Conley was sitting there at the front door. When I went down the ladder Miss Daisy went with me. We went back by the trash pile in the basement. I saw an old cot and a stretcher. I have been in Atlanta for ten years. I have never been away over a week. I saw Mr. Frank about two o'clock in the afternoon. There was no curtains drawn in the office. It was very light in there. I went in the first office, near the stairway. The night watchman I spoke of was a negro. I saw him about the first of January. I saw a negro night watchman there between September and December. I lived in Walton County for twenty years. I came right here from Walton County. I was absent from Walton County once for two or three years and lived in Lawrenceville. I have walked home from the factory with Miss Laura Atkins and Miss Smith.

RE-DIRECT EXAMINATION.

I gave Jim Conley a half dozen or more quarters. I saw Mr. Frank in his office in the day time. Mr. Frank had Coca-Cola, lemon and lime and beer in the office. I never saw the ladies in his office doing any writing.

RECALLED FOR CROSS EXAMINATION.

Andrew Dalton is my brother-in-law. John Dalton is a first cousin. I am the Dalton that went to the chain gang for stealing in Walton County in 1894. We all pleaded guilty. The others paid out. I don't know how long I served. I stole a shop hammer. That was in case No. L. There were three cases and the sentences were concurrent. One of the other Daltons stole a plow and I don't know what the other one stole. I was with them. In 1899 at the February term of Walton Superior Court I was indicted for helping steal bale of cotton. In Gwinnett County I was prosecuted for stealing corn, but I came clear.

RE-DIRECT EXAMINATION.

It has been 18 or 20 years since I have been in trouble. I was drunk with the two Dalton boys when we got into that hammer and plow stock scrape.

CROSS EXAMINATION.

I don't know whether I was indicted in 1906 in Walton County for selling liquor. I know Dan Hillman and I know Bob Harris. I don't know whether I was indicted for selling liquor to them or not.

RE-DIRECT EXAMINATION.

Miss Daisy Hopkins knows Mr. Frank. I have seen her talking to him and she told me about it.

S. L. ROSSER, sworn for the State.

I am a city policeman. On Monday, April 28th, I went out to see Mrs. White. On May 6th or 7th was the first time I knew Mrs. White claimed to have seen a negro at the factory on April 26th. These are the same chips we had at factory. The club was not on floor by elevator the day I searched the place. I had a flash light and searched for everything. I would have seen it had it been there.

CROSS EXAMINATION.

I made no inquiry of her about this before. She volunteered the information when I came out the second time.

JAMES CONLEY, sworn for the State.

I had a little conversation with Mr. Frank on Friday, the 25th of April. He wanted me to come to the pencil factory that Friday morning that he had some work on the third floor he wanted me to do. All right, I will talk louder. Friday evening about three o'clock Mr. Frank came to the fourth floor where I was working and said he wanted me to come to the pencil factory on Satday morning at 8:30; that he had some work for me to do on the second floor. I have been working for the pencil company a little over two years. Yes, I had gone back there that way for Mr. Frank before, when he asked me to come back. I got to the pencil factory about 8:30 on April 26th. Mr. Frank and me got to the door at the same time. Mr. Frank walked on the inside and I walked behind him and he says to me, "Good morning," and I says, "Good morning, Mr. Frank." He says, "You are a little early this morning," and I says, "No, sir, I am not early." He says, "Well, you are a little early to do what I wanted you to do for me, I want you to watch for me like you have been doing the rest of the Saturdays." I always stayed on the first floor like I stayed the 26th of April and watched for Mr. Frank, while he and a young lady would be upon the second floor chatting, I don't know what they were doing. He only told me they wanted to chat. When young ladies would come there, I would sit down at the first floor and watch the door for him. I couldn't exactly tell how many times I have watched the door for him previous to April 26th, it has been several times that I watched for him. I don't know who would be there when I watched for him, but there would be another young man, another young lady during the time I was at the door. A lady for him and one for Mr. Frank. Mr. Frank was alone there once, that was Thanksgiving day. I watched for him. Yes, a woman came

there Thanksgiving day, she was a tall, heavy built lady. I stayed down there and watched the door just as he told me the last time, April 26th. He told me when the lady came he would stomp and let me know that was the one and for me to lock the door. Well, after the lady came and he stomped for me, I went and locked the door as he said. He told me when he got through with the lady he would whistle and for me then to go and unlock the door. That was last Thanksgiving day, 1912. On April 26th, me and Mr. Frank met at the door. He says, "What I want you to do is to watch for me to-day as you did other Saturdays," and I says, "All right." I said, "Mr. Frank, I want to go to the Capital City Laundry to see my mother," and he said, "By the time you go to the laundry and come back to Trinity Avenue, stop at the corner of Nelson and Forsyth Streets until I go to Montags." I don't know exactly what time I got to the corner of Nelson and Forsyth Streets, but I came there sometime between 10 and 10:30. I saw Mr. Frank as he passed by me, I was standing on the corner, he was coming up Forsyth Street toward Nelson Street. He was going to Montag's factory. While I was there on the corner he said, "Ha, ha, you are here, is yer." And I says, "Yes, sir, I am right here, Mr. Frank." He says, "Well, wait until I go to Mr. Sig's, I won't be very long, I'll be right back." I says, "All right, Mr. Frank, I'll be right here." I don't know how long he stayed at Montag's. He didn't say anything when he came back from Montag's, but told me to come on. Mr. Frank came out Nelson Street and down Forsyth Street toward the pencil factory and I followed right behind. As we passed up there the grocery store, Albertson Brothers, a young man was up there with a paper sack getting some stuff out of a box on the sidewalk, and he had his little baby standing by the side of him, and just as Mr. Frank passed by him, I was a little behind Mr. Frank, and Mr. Frank said something to me, and by him looking back at me and saying something to me, he hit up against the man's baby, and the man turned around and looked to see who it was, and he looked directly in my face, but I never did catch the idea what Mr. Frank said. Mr. Frank stopped at Curtis' Drug Store, corner Mitchell and Forsyth Streets, went into the soda fountain. He came out and went straight on to the factory, me right behind him. When we got to the factory we both went on the inside, and Mr. Frank stopped me at the door and when he stopped me at the door he put his hand on the door and turned the door and says: "You see, you turn the knob just like this and there can't nobody come in from the outside," and I says, "All right," and I walked back to a little box back there by the trash barrel: He told me to push the box up against the trash barrel and sit on it, and he says, "Now, there will be a young lady up here after awhile, and me and her are going to chat a little," and he says, "Now, when the lady comes, I will stomp like I did before," and he says, "That will be the lady, and you go and shut the door," and I says, "All right, sir." And he says, "Now, when I whistle I will be through, so you can go and unlock the door and you come upstairs to my office then like you were going to borrow some money for me and that will

give the young lady time to get out." I says, "All right, I will do just as you say, " and I did as he said. Mr. Frank hit me a little blow on my chest and says, "Now, whatever you do, don't let Mr. Darley see you." I says, "All right, I won't let him see me." Then Mr. Frank went upstairs and he said, "Remember to keep your eyes open," and I says, "All right, I will, Mr. Frank." And I sat there on the box and that was the last I seen of Mr. Frank until up in the day sometime. The first person I saw that morning after I got in there was Mr. Darley, he went upstairs. The next person was Miss Mattie Smith, she went on upstairs, then I saw her come down from upstairs. Miss Mattie walked to the door and stopped, and Mr. Darley comes on down to the door where Miss Mattie was, and he says, "Don't you worry, I will see that you get that next Saturday." And Miss Mattie came on out and went up Alabama Street and Mr. Darley went back upstairs. Seemed like Miss Mattie was crying, she was wiping her eyes when she was standing down there. This was before I went to Nelson and Forsyth Streets. After we got back from Montag Brothers, the first person I saw come along was a lady that worked on the fourth floor, I don't know her name. She went on up the steps. The next person that came along was the negro drayman, he went on upstairs. He was a peg-legged fellow, real dark. The next I saw this negro and Mr. Holloway coming back down the steps. Mr. Holloway was putting on his glasses and had a bill in his hands, and he went out towards the wagon on the sidewalk, then Mr. Holloway came back up the steps, then after Mr. Darley came down and left, Mr. Holloway came down and left. Then this lady that worked on the fourth floor came down and left. The next person I saw coming there was Mr. Quinn. He went upstairs, stayed a little while and then came down. The next person that I saw was Miss Mary Perkins, that's what I call her, this lady that is dead, I don't know her name. After she went upstairs I heard her footsteps going towards the office and after she went in the office, I heard two people walking out of the office and going like they were coming down the steps, but they didn't come down the steps, they went back towards the metal department. After they went back there, I heard the lady scream, then I didn't hear no more, and the next person I saw coming in there was Miss Monteen Stover. She had on a pair of tennis shoes and a rain coat. She stayed there a pretty good while, it wasn't so very long either. She came back down the steps and left. After she came back down the steps and left, I heard somebody from the metal department come running back there upstairs, on their tiptoes, then I heard somebody tiptoeing back towards the metal department. After that I kind of dozed off and went to sleep. Next thing I knew Mr. Frank was up over my head stamping and then I went and locked the door, and sat on the box a little while, and the next thing I heard was Mr. Frank whistling. I don't know how many minutes it was after that I heard him whistle. When I heard him whistling I went and unlocked the door just like he said, and went on up the steps. Mr. Frank was standing up there at the top of the steps and shivering and trembling

and rubbing his hands like this. He had a little rope in his hands—a long wide piece of cord. His eyes were large and they looked right funny. He looked funny out of his eyes. His face was red. Yes, he had a cord in his hands just like this here cord. After I got up to the top of the steps, he asked me, "Did you see that little girl who passed here just a while ago?" and I told him I saw one come along there and she come back again, and then I saw another one come along there and she hasn't come back down, and he says, "Well, that one you say didn't come back down, she came into my office awhile ago and wanted to know something about her work in my office and I went back there to see if the little girl's work had come, and I wanted to be with the little girl, and she refused me, and I struck her and I guess I struck her too hard and she fell and hit her head against something, and I don't know how bad she got hurt. Of course you know I ain't built like other men. The reason he said that was, I had seen him in a position I haven't seen any other man that has got children. I have seen him in the office two or three times before Thanksgiving and a lady was in his office, and she was sitting down in a chair (and she had her clothes up to here, and he was down on his knees, and she had her hands on Mr. Frank. I have seen him another time there in the packing room with a young lady lying on the table, she was on the edge of the table when I saw her). He asked me if I wouldn't go back there and bring her up so that he could put her somewhere, and he said to hurry, that there would be money in it for me. When I came back there, I found the lady lying flat of her back with a rope around her neck. The cloth was also tied around her neck and part of it was under her head like to catch blood. I noticed the clock after I went back there and found the lady was dead and came back and told him. The clock was four minutes to one. She was dead when I went back there and I came back and told Mr. Frank the girl was dead and he said "Sh-Sh!" He told me to go back there by the cotton box, get a piece of cloth, put it around her and bring her up. I didn't hear what Mr. Frank said, and I came on up there to hear what he said. He was standing on the top of the steps, like he was going down the steps, and while I was back in the metal department I didn't understand what he said, and I came on back there to understand what he did say, and he said to go and get a piece of cloth to put around her, and I went and looked around the cotton box and got a piece of cloth and went back there. The girl was lying flat on her back and her hands were out this way. I put both of her hands down easily, and rolled her up in the cloth and taken the cloth and tied her up, and started to pick her up, and I looked back a little distance and saw her hat and piece of ribbon laying down and her slippers and I taken them and put them all in the cloth and I ran my right arm through the cloth and tried to bring it up on my shoulder. The cloth was tied just like a person that was going to give out clothes on Monday, they get the clothes and put them on the inside of a sheet and take each corner and tie the four corners together, and I run my right arm through the cloth after I tied it that way and went to put it on my shoulder, and I

found I couldn't get it on my shoulder, it was heavy and I carried it on my arm the best I could, and when I got away from the little dressing room that was in the metal department, I let her fall, and I was scared and I kind of jumped, and I said, "Mr. Frank, you will have to help me with this girl, she is heavy," and he come and caught her by the feet and I laid hold of her by the shoulders, and when we got her that way I was backing and Mr. Frank had her by the feet, and Mr. Frank kind of put her on me, he was nervous and trembling, and after we got up a piece from where we got her at, he let her feet drop and then he picked her up and we went on to the elevator, and he pulled down on one of the cords and the elevator wouldn't go, and he said, "Wait, let me go in the office and get the key," and he went in the office and got the key and come back and unlocked the switchboard and the elevator went down to the basement, and we carried her out and I opened the cloth and rolled her out there on the floor, and Mr. Frank turned around and went on up the ladder, and I noticed her hat and slipper and piece of ribbon and I said, "Mr. Frank, what am I going to do with these things? " and he said, "Just leave them right there," and I taken the things and pitches them over in front of the boiler, and after Mr. Frank had left I goes on over to the elevator and he said, "Come on up and I will catch you on the first floor," and I got on the elevator and started it to the first floor, and Mr. Frank was running up there. He didn't give me time to stop the elevator, he was so nervous and trembly, and before the elevator got to the top of the first floor Mr. Frank made the first step onto the elevator and by the elevator being a little down like that, he stepped down on it and hit me quite a blow right over about my chest and that jammed me up against the elevator and when we got near the second floor he tried to step off before it got to the floor and his foot caught on the second floor as he was stepping off and that made him stumble and he fell back sort of against me, and he goes on and takes the keys back to his office and leaves the box unlocked. I followed him into his private office and I sat down and he commenced to rubbing his hands and began to rub back his hair and after awhile he got up and said, "Jim," and I didn't say nothing, and all at once he happened to look out of the door and there was somebody coming, and he said, "My God, here is Emma Clarke and Corinthia Hall," and he said "Come over here Jim, I have got to put you in this wardrobe, and he put me in this wardrobe, and I stayed there a good while and they come in there and I heard them go out, and Mr. Frank come there and said, "You are in a tight place," and I said "Yes," and he said "You done very well." So after they went out and he had stepped in the hall and had come back he let me out of the wardrobe, and he said "You sit down," and I went and sat down, and Mr. Frank sat down. But the chair he had was too little for him or too big for him or it wasn't far enough back or something. He reached on the table to get a box of cigarettes and a box of matches, and he

takes a cigarette and a match and hands me the box of cigarettes and I lit one and went to smoking and I handed him back the box of cigarettes, and he put it back in his pocket and then he took them out again and said, "You can have these," and I put them in my pocket, and then he said, "Can you write?" and I said, "Yes, sir, a little bit," and he taken his pencil to fix up some notes. I was willing to do anything to help Mr. Frank because he was a white man and my superintendent, and he sat down and I sat down at the table and Mr. Frank dictated the notes to me. Whatever it was it didn't seem to suit him, and he told me to turn over and write again, and I turned the paper and wrote again, and when I done that he told me to turn over again and I turned over again and I wrote on the next page there, and he looked at that and kind of liked it and he said that was all right. Then he reached over and got another piece of paper, a green piece, and told me what to write. He took it and laid it on his desk and looked at me smiling and rubbing his hands, and then he pulled out a nice little roll of greenbacks, and he said, "Here is $200," and I taken the money and looked at it a little bit and I said, "Mr. Frank, don't you pay another dollar for that watchman, because I will pay him myself," and he said, "All right, I don't see what you want to buy a watch for either, that big fat wife of mine wanted me to buy an automobile and I wouldn't do it." And after awhile Mr. Frank looked at me and said, "You go down there in the basement and you take a lot of trash and burn that package that's in front of the furnace," and I told him all right. But I was afraid to go down there by myself, and Mr. Frank wouldn't go down there with me. He said, "There's no need of my going down there," and I said, "Mr. Frank, you are a white man and you done it, and I am not going down there and burn that myself." He looked at me then kind of frightened and he said "Let me see that money" and he took the money back and put it back in his pocket, and I said, "Is this the way you do things?" and he said, "You keep your mouth shut, that is all right." And Mr. Frank turned around in his chair and looked at the money and he looked back at me and folded his hands and looked up and said "Why should I hang? I have wealthy people in Brooklyn," and he looked down when he said that, and I looked up at him, and he was looking up at the ceiling, and I said, "Mr. Frank, what about me?" and he said, "That's all right, don't you worry about this thing, you just come back to work Monday like you don't know anything, and keep your mouth shut, if you get caught I will get you out on bond and send you away," and he said, "Can you come back this evening and do it?" and I said "Yes, that I was coming to get my money." He said, "Well, I am going home to get dinner and you come back here in about forty minutes and I will fix the money," and I said, "How will I get in?" and he said, "There will be a place for you to get in all right, but if you are not coming back let me know, and I will take those things and put them down with the body," and I said, "All right, I will be back in about forty minutes." Then I went down over to the beer saloon across the street and I took the cigarettes out of the box and there was some money in there and I took that out and there was two

paper dollar bills in there and two silver quarters and I took a drink, and then I bought me a double header and drank it and I looked around at another colored fellow standing there and I asked him did he want a glass of beer and he said "No," and I looked at the clock and it said twenty minutes to two and the man in there asked me was I going home, and I said, "Yes," and I walked south on Forsyth Street to Mitchell and Mitchell to Davis, and I said to the fellow that was with me, "I am going back to Peters Street," and a Jew across the treet that I owed a dime to called me and asked me about it and I paid him that dime. Then I went on over to Peters Street and stayed there awhile Then I went home and I taken fifteen cents out of my pocket and gave a little girl a nickle to go and get some sausage and then I gave her a dime to go and get some wood, and she stayed so long that when she came back I said, "I will cook this sausage and eat it and go back to Mr. Frank's," and I laid down across the bed and went to sleep, and I didn't get up no more until half past six o'clock that night, that's the last I saw of Mr. Frank that Saturday. I saw him next time on Tuesday on the fourth floor when I was sweeping. He walked up and he said, "Now remember, keep your mouth shut," and I said, "All right," and he said, "If you'd come back on Saturday and done what I told you to do with it down there, there wouldn't have been no trouble." This conversation took place between ten and eleven o'clock Tuesday. Mr. Frank knew I could write a little bit, because he always gave me tablets up there at the office so I could write down what kind of boxes we had and I would give that to Mr. Frank down at his office and that's the way he knew I could write. I was arrested on Thursday, May 1st, Mr. Frank told me just what to write on those notes there. That is the same pad he told me to write on (State's Exhibit A). The girl's body was lying somewhere along there about No. 9 on that picture (State's Exhibit A). I dropped her somewhere along No. 7. We got on elevator on the second floor. The box that Mr. Frank unlocked was right around here on side of elevator. He told me to come back in about forty minutes to do that burning. Mr. Frank went in the office and got the key to unlock the elevator. The notes were fixed up in Mr. Frank's private office. I never did know what became of the notes. I left home that morning about 7 or 7:30. I noticed the clock when I went from the factory to go to Nelson and Forsyth Streets, the clock was in a beer saloon on the corner of Mitchell Street. It said 9 minutes after 10. I don't know the name of the woman who was with Mr. Frank on Thanksgiving day. I know the man's name was Mr. Dalton. When I saw Mr. Frank coming towards the factory Saturday morning he had on his raincoat and his usual suit of clothes and an umbrella. Up to Christmas I used to run the elevator, then they put me on the fourth floor to clean up. I cleaned up twice a week on the first floor under Mr. Holloway's directions. The lady I saw in Mr. Frank's office Thanksgiving day was a tall built lady, heavy weight, she was nice looking, and she had on a blue looking dress with white dots in it and a grayish looking coat with kind of tails to it. The coat was open like that and she had on white slippers and stockings. On Thanksgiving day Mr.

Frank told me to come to his office. I have never seen any cot or bed down in the basement. I refused to write for the police the first time. I told them I couldn't write.

CROSS EXAMINATION.

I am 27 years old. The last Job I had was working for Dr. Palmer. I worked for him a year and a half. I worked before that for Orr Stationery Company for three or four months. Before that I worked for S. S. Gordon. Before that I worked for Adams Woodward and Dr. Honeywell. Got my first job eleven years ago with Mr. S. M. Truitt. Next job was with W. S. Coates. I can't spell his name. I can't read and write good. I Can't read the newspapers good. No, sir; I don't read the newspaper. I never do, I have tried, I found I couldn't and I quit. I can't read a paper right through. I can't go right straight down through the page, and that's the reason I don't read newspapers, I can't get any sense out of them. There is some little letters like "dis" and "dat" that I can read. The other things I don't understand. No, I can't spell "Dis" and "dat". Yes, I can spell "school," I can't spell "collar," I can spell "shirts." I can spell "shoes," and "hat." I spell "cat" with a "k". I can spell "dog," and most simple little words like that. I don't know about spelling "mother." I can spell "papa." I spell it p-a-p-a. I can't spell "father" or "jury" or "judge" or "stockings." I never did go to school further than the first grade. I went to school about a year. I can spell "day," but not "daylight," I can spell "beer" but not "whiskey." I couldn't read the name "whiskey." No, I can't read any letter on that picture there (Exhibit A—State). I can't figure except with my fingers. I know the figures as far as eight, as far as twelve. I knows more about counting than I do about figuring. I don't know what year it was I went to school. I worked for Truitt about two years, for Mr. Coates five years, for Mr. Woodward and Mr. Honeywell about a year and a pressing club about two years, Orr Stationery Company three or four months, Dr. Palmer about a year and a half, and then I went to work for the pencil factory. Mr. Herbert Schiff employed me at the pencil factory. Sometimes Mr. Schiff paid me off, sometimes Mr. Gantt, sometimes Mr. Frank. I don't remember when I saw Mr. Frank pay me off or how many times. I drawed my money very seldom. I would always have somebody else draw it for me. I told Mr. Holloway to let Gordon Bailey draw my money mostly. He's the one they call "Snowball." The reason why I didn't draw it myself I would be owing some of the boys around the factory and I didn't have it to pay, and I would leave the factory about half past eleven so that I didn't have to pay it, and then I would have Snowball draw my money for me mostly. I would see him afterwards and he would give me the money. Sometimes I would go down through the basement out the back way to keep away from them. The reason I let them draw my money I owed some of them, and some of them owed me and I wanted them to pay me first before I paid them. I didn't want to get my money on the inside because I didn't want them to see such a little I was drawing to what they were drawing. I wasn't drawing

but $6.05. Snowball was drawing $6.05. As to who it was I didn't want to see what I was drawing, there was one named Walter Pride; he's been there five years. He said he drew $12.00 a week. Then there was Joe Pride, he told me he drew $8.40 a week. They were down in the basement and asked me how much I was drawing. I told them it wasn't none of their business. Then there was a fellow named Fred. I don't know how much he drew. The next one was the fireman. I don't know how much he drew. There were two or three others, but I didn't have no talk with them. I was just hiding what I drew from Walter Pride. As to whether I couldn't draw my money after Walter drew his without his knowing it, well he would always be down there waiting for me. As to whether I couldn't get my money without his being behind me and seeing what I got, he could see if I tore open the envelope. I had to open it to pay them with. That's the reason I didn't go and draw my money. I know I could have put it in my pocket, but I couldn't tear it open unless I took it out. Yes, the reason I didn't draw my money was because I didn't want to pay them. That's the reason I let Snowball draw my money. They could have slipped up behind me and looked. As to whether I couldn't walk off and keep them from seeing it, if I didn't tear it open, then they would keep up with me until I did. He would follow me around. No, I wasn't trying to keep out of paying them. As to what I was trying to do, if they paid me then I would pay them. The way I liked to settle with them, I liked to take them to the beer saloon and buy twice as much as they get. If I was there when they come in on me, I would say, "I owe you, let's drink it up." Yes, I would get out of it if I could, but if they saw me walk up and pay them that way. I paid Waltel Pride sometimes that way and sometimes the other way. I would say, "I owe you fifteen cents, I buy three beers, and you owe me fifteen cents, and that be three beers." I say if I would be in the beer saloon when they come in there, I would do that, but if I could get out before they saw me, I would be gone. I never did know what time the watchman come there on Saturday, or any Saturday. I never have seen the night watchman in the factory. I have seen young Mr. Kendrick come and get his money. He always comes somewhere about two o'clock to get his money. I have seen him lots of times Saturday and get his money. He always got it from Mr. Frank at two o'clock. No, I didn't know Newt Lee. I heard them say there was a negro night watchman, but I never did know that he was a negro. I knew they paid employees off at twelve o'clock. I don't know what time the night watchman would come there to work. Mr. Holloway stays until 2:30. I couldn't tell the first time I ever watched for Mr. Frank. Sometimes during the last summer, somewhere just about in July. As to what he said to get me to watch for him that was on a Saturday, I would be there sweeping and Mr. Frank come out and called me in his office. I always worked until half past four in the evening. I would leave about half past twelve, ring out and come back about half past one or two. Sometimes I would ring in when I came back and sometimes I wouldn't. I ringed in every morning when I came. I never did ring in much. I would do it after they got after me about it. It was

my habit not to do it. As to how they would know how much to pay me if I didn't ring in, I knew they paid me $1.10 a day, all the time. No, they didn't pay me by the clock punches, they paid me by the day, they paid me 11c. an hour. Sometimes I would punch the clock when I got there; that was my duty. Sometimes I was paid when I didn't work, I don't know how that happened. but Mr. Frank would come and tell me I didn't take out that money for the time you lost last week. I don't know on what date he ever did that on. Yes. I always got my money in envelopes. As to how they would know how much to put in the envelope, when I didn't punch, they would come and ask if I was here every time I didn't ring in, and they would ask Mr. Holloway if I was here. If the clock didn't show any punch, they would ask me if I was here at that hour. No they wouldn't ask how many hours I was here, they would just ask if I was here a certain hour and then they would pay me for the full day, whether I punched the clock or not, just so I punched it in the morning. The lady that was with Mr. Frank the time I watched for him some time last July was Miss Daisy Hopkins. It would always be somewhere between 3 and 3:30. I was sweeping on the second floor. Mr. Frank called me in his office. There was a lady in there with him. That was Miss Daisy Hopkins. She was present when he talked to me. He said "You go down there and see nobody don't come up and you will have a chance to make some money. The other lady had gone out to get that young man, Mr. Dalton. I don't know how long she had been gone. She came back after a while with Mr. Dalton. They came upstairs to Mr. Frank's office, stayed there ten or fifteen minutes. They came back down, they didn't go out and she says, "All right, James." About an hour after that Mr. Frank came down. This lady and man after she said "All right, James" went down through the trap door into the basement. There's a place on the first floor that leads into another department and there's a trap door in there and a stairway that leads down in the basement, and they pull out that trap door and go down in the basement. I opened the trap door for them. The reason I opened the trap door because she said she was ready, I knew where she was going because Mr. Frank told me to watch, he told me wherethey were going. I don't know how long they stayed down there. I don't know when they came back. I watched the door all the time. Mr. Dalton gave me a quarter and went out laughing and the lady went up the steps. Then the ladies came down and left, and then Mr. Frank came down after they left. That was about half past four. He gave me a quarter and I left and then he left. The next Saturday I watched was right near the same thing. It was about the last of July or the first of August. The next Saturday I watched for him about twelve o'clock he said "You know what you done for me last Saturday, I want to put you wise for this Saturday." I said, "All right, what time?" He said, "Oh, about half past." After Mr. Holloway left, Miss Daisy Hopkins came on in into the office, Mr. Frank came out of the office, popped his fingers, bowed his head and went back into the office. I was standing there by the clock. Yes, he popped his fingers and bowed to me, and then I went down and stood by the door. He stayed there

that time about half an hour and then the girl went out. He gave me half a dollar this time. The next time I watched for him and Mr. Dalton too, somewhere along in the winter time, before Thanksgiving Day, somewhere about the last part of August. Yes, that's somewhere near the winter. This time he spoke to me on the fourth floor in the morning. Gordon Bailey was standing there when he spoke to me. He said, "I want to put you wise again for to-day." The lady that came in that day was one who worked on the fourth floor; it was not Miss Daisy Hopkins. A nice looking lady, kind of slim. She had hair like Mr. Hooper's. She had a green suit of clothes on. When Miss Daisy Hopkins came she had on a black skirt and white waist the first time. I don't know the name of that lady that works on the fourth floor. Yes, I have seen her lots of times at the factory, but I don't know her name. She went right to Mr. Frank's office, then I went and watched. She stayed about half an hour and came out. Mr. Frank went out of the factory and then came back. I stayed there and waited for him. He said, "I didn't take out that money." I said, "Yes, I seed you didn't." He said, "That's all right, old boy, I don't want you to say anything to Mr. Herbert or Mr. Darley about what's going on around here." Next time I watched for him was Thanksgiving Day. I met Mr. Frank that morning about eight o'clock. He said "A lady will be in here in a little while, me and her are going to chat, I don't want you to do no work, I just want you to watch." In about half an hour the lady came. I didn't know that lady, she didn't work at the factory. I think I saw her in the factory two or three nights before Thanksgiving Day in Mr. Frank's office. She was a nice looking lady. I think she had on black clothes. She was very tall, heavy built lady. After she came in that Thanksgiving Day morning, I closed the door after he stamped for me to close it. She went upstairs towards Mr. Frank's office. Mr. Frank came out there and stamped, and I closed the door. Mr. Frank said, "I'll stamp after this lady comes and you go and close the door and turn the night latch." That's the first time he told me about the night lock. And he says, "If everything is all right you kick against the door," and I kicked against the door. After an hour and a half Mr. Frank came down and unlocked the doors and says, "Everything is all right." He then went and looked up the street and told the lady to come on downstairs. After she came down, she said to Mr. Frank, "Is that the nigger?" and Mr. Frank said, "Yes," and she said, "Well, does he talk much?" and he says, "No, he is the best nigger I have even seen." Mr. Frank called me in the office and gave me $1.25. The lady had on a blue skirt with white dots in it and white slippers and white stockings and had a gray tailor-made coat, with pieces of velvet on the edges of it. The velvet was black and the cloth of the coat was gray. She had on a black hat with big black feathers. I left a little before 12 o'clock. I didn't see anybody else there that day at the office. The next time I watched was way after Christmas, on a Saturday about the middle of January—somewhere about the first or middle. It was right after New Year, one or two, or three or four days after. It was on a Saturday. He said a young man and two ladies would be coming. That was that Saturday morning at half past seven. I was

standing by the side of Gordon Bailey when he come and told me, and he said, I could make a piece of money off that man. Yes, Snowball could hear what he said. The man and ladies came about half past two or three o'clock. They stayed there about two hours. I didn't know either one of the ladies. I can't describe what either one of them had on. The man was tall slim built a heavy man. I have seen him at the factory talking to Holloway, he didn't work there. I have seen him often talking to Holloway, through the week. You asked me what I did the second Saturday after I watched for him, well, I don't remember. As to what I did the Saturday I watched for him the second time, I disremember what I did. The Saturday after that, I think about the first of August, I did some more watching for him. I don't remember what I did the Saturday before Thanksgiving day. I don't remember what I did the Saturday after Thanksgiving day. I don't remember what I did the next Saturday. I don't know, sir, what I did the next Saturday. The next Saturday I did some watching for him. I watched for him somewhere about the last of November after Thanksgiving Day. No, I don't remember any of those dates. Couldn't tell you to save my life what time I left home the first time I watched for him. I couldn't tell you what time I got to the factory the second time I watched for him, nor what time I left home. I don't know whether I drew my money on the first Saturday I watched for him. I disremember whether anybody else drew my money for me the second Saturday I watched for him. I don't know how much I drew. I couldn't tell you whether I drew my money Thanksgiving Day or not. I don't know how much I drew. I don't remember what time I got down or what time I left. I don't know when I got to the factory the day before Thanksgiving, or how long I worked there. I don't remember how many hours I worked the first Saturday I watched for him or the second, or the third, or Thanksgiving Day. No, I don't know how much I drew on those days. The first time I was in prison was in September. The next time was sometime before Christmas, I can't remember the date. I was there thirty days. It was somewhere along in October. A year before that I was in prison too, about thirty days. I have been in prison three times since I have been with the pencil company. I have been in prison about three times within the last three or four years. I have been in prison seven or eight times within the last four or five years. I can't give you any of the dates, nor how long I stayed there any of the times that I was there. I don't know what month or what day it was, nor how long I stayed there. I knew the factory was not going to be run on April 26th. Yes, Snowball and I drink beer together sometimes in the building. Yes, we used to go down in the basement and drink together, but he aint the only man. I never was drunk at the factory. Snowball wasn't there the first Saturday I watched for Mr. Frank. I think he laid off. I don't know whether he was there the second or third Saturdays, I didn't see him Thanksgiving morning, but I saw him the day before Thanksgiving. That was the time that Mr. Frank told me to watch for him. He talked to me before Snowball. I don't know whether Snowball was there in January when I watched. Snowball was there in January in the box room when Mr. Frank

told me to watch for him. I don't know whether Mr. Frank knew he was there or not. There were eight niggers in all working in the factory. Snowball, the fireman and me did just plain manual labor, the rest of the negroes had better jobs. Snowball, the fireman and I were the last negroes to get jobs there. We were the new darkies; the others had been working there before we went there. Mr. Frank used to laugh and jolly with me. I couldn't tell you the first time he did this. Mr. Darley has seen him jollying me. They would jolly me together. They would play and go on around there with me. It has been so long ago I can't tell you any of the jokes. Mr. Schiff and Mr. Holloway has seen him joking with me. He would say, "Come on I am going to make a graveyard down there in the basement if you don't hurry and bring that elevator back up here." Mr. Holloway heard him say that. Mr. Schiff has seen him playing with me. He would goose me and punch me and tell me I was a good negro. I don't remember anything else he said. Yes, Mr. Darley would goose me and kick me a little bit, just playing with me. Mr. Schiff would crack jokes with me. I don't remember the time. The time Mr. Frank came in the elevator and told me about watching for him, he didn't know Snowball was in there. Snowball was standing right there by me. Mr. Frank could have seen him and he could have heard anything that was said. He saw Snowball standing there. I have been at the factory over two years. I don't remember the day or month I went there. It was some time in 1910. I don't remember whether it was summer or winter. Miss Daisy Hopkins worked on the fourth floor in 1912. I don't know when she quit. I saw her working from June, 1912, up until about Christmas. Yes, I worked on the same floor with her. I don't know whether she worked there in 1913. Miss Daisy was a low lady, kind of heavy, and she was pretty, low, chunky kind of heavy weight. I don't know what color hair she had or eyes, or her complexion. She was light skinned. She looked to be about twenty-three. I know she was there in June, because she gave me a note to take down to Mr. Schiff. I remember that because the note had June on it. Mr. Schiff said it had "June" on it when he read it. I can't read but he read that note and he read "June something," it was on the outside of the note. It was on the back of the note. "June" was written on the back of that note. She wrote the note and folded it up and he read "June" on the back of it and he laughed at it. The reason I know she left the factory during Christmas because Mr. Dalton told me she wasn't coming back. He told me that one Saturday coming down to the factory. I never have seen Mr. Dalton except at the factory. No, he doesn't work there. I saw him somewhere along in January. He came out that time by himself. He and a lady had been down in the basement. The last time I saw him the detectives brought him down at the station house and asked if I had ever seen him in there. I saw Mr. Holloway at the factory the first Saturday I watched for Mr. Frank. The next Saturday I watched, he was sick and wasn't there. He was sick two Saturdays in June. I disremember whether I saw Mr. Schiff and Mr. Darley. I remember seeing Mr. Darley at the factory on Thanksgiving Day. I don't remember what time he left. I

couldn't tell you anybody who came to the factory the first Saturday I watched. The second time I think there were some young ladies working up on the fourth floor. I don't know about the third time. I don't know whether anybody was working there Thanksgiving or not. I didn't see Mr. Schiff at all. I will swear that he was not in the office with Mr. Frank. I don't know whether any ladies were working there the next time or not. I have been back in the metal department, but I nevr have been on the right hand side where the machines are. I have swept on the second floor, but not in the metal department. I don't know where those vats are back there. I don't know what you are talking about. I don't know anything about the plating room. I never have been in Mr. Quinn's office. I have put disinfectants in the ladies and gentlemen's closets back there. I wouldn't go inside. I would only go to the door. I stood outside of the door and sprinkled it in a little way. Outside of that, and going to Mr. Quinn's office I have never been on the left hand side of the factory. I have been there where they wash the lead at, and I have stuck bills in Mr. Quinn's office. Yes, I have been back in there where that dark place is. I don't know how many times I have stacked some boxes back in there. I have been back there three times altogether. Sometime before Christmas. Yes, sir, you can see from the top of the stairway back in there. I have been back there three times altogether. Sometime before Christmas. Yes, sir; you can see from the top of the stairway to Mr. Frank's inside office. A man sitting at Mr. Frank's desk can see people coming up the stairway if he is watching for them. If the safe door is open I don't hardly think he can see them. If it is shut he can. I am certain of that. I thought you were talking about the third floor. He couldn't see people coming up from the first floor. He can see them after they get along by the clock. I left the factory 5:30 Friday afternoon, bofore the factory stopped. I think I punched when I went out. One of them was ten minutes fast. That was the one on the right. I left there without drawing my money because I knew I wasn't going to draw but $2.75 and I owed the watchman a dollar anl I knowed I wouldn't have enough for me and to pay him and I told Mr. Holloway to let Snowball draw it for me. Snowball drew it for me and met me at the shoe shop at the corner of Alabama and Forsyth Street. He gave me $3.75. I wasn't supposed to draw but $2.75, and Mr. Frank taken that dollar for the watchman and stuck an extra dollar in my envelope and that made $3.75. I don't remember how many beers I drank Friday. Yes, I told Mr. Scott I got up at 9 o'clock that morning. That wasn't true. I ate breakfast about seven. Yes, I told Mr. Black I ate at 9:30. That wasn't true. I left my house beteween 7 and 7:30. I told Mr. Scott I left somewhere between 10 and 10:30. No, that wasn't true. I got to Peters Street about 25 minutes to 8. I don't know how long I stayed there. Some things in my affidavit that I made that are true. Yes, there are some things in my last affidavit that are true. I was arrested on the first of May. I sent for Mr. Black to come down when I made my first statement on May 18th. Yes, I denied I had been to the factory in that statement. I made

that statement in the detectives' office. Mr. Black and Mr. Scott were present. They didn't question two or three hours. I did some writing before then, before that statement was made. Yes, I know I did some writing before May 18th. I did some writing in Chief's office that Sunday. I told Black I bought whiskey on Peters Street at about 10:30. I told them I paid forty cents for it. I don't remember telling them that I bought the whiskey at 11 o'clock. Yes, I told them I went into the Butt-In Saloon after I went to Earley's for the whiskey. Some of it I told them was the truth and some of it wasn't. They asked me if I was lying and I held my head down. I held back some of the truth, and when they asked me if that was the truth I hung my head down. I didn't want to give the man away, but I wanted to tell some and let him see what I was going to do and see if he wasn't going to stick to his promise as he had said. I told them I went into Butt-In Saloon and saw some negroes at tables shooting dice and I won ninety cents and bought a glass of beer. I told them that I went to three beer saloons. I told them after I went home at 2:30, I went to Joe Carr's saloon and got 15c. worth of beer. I don't remember telling them that I went there between 3:30 and four o'clock. The detectives talked to me nearly every day after I made my first statement. Sometimes hours at a time. No, they didn't cuss me. Yes. I sent for Black on May 24th. When the statement came out in the papers that's the time I sent for him. As to how I knew it came out in the papers, I heard the boys across the street hollering extra papers. Mr. Black came down after I sent for him and I told him it's awful hot in here, and I told him I was going to tell him something, but I wasn't going to tell him all of it now. I told him that I would tell him part and hold part back. Scott and Black were both there. Yes, I told Mr. Black on May 24th, the time I made the second statement, that I helped tote the little girl. I sure remember that. I think I told them about Mr. Frank getting me to watch for him, that he told me he struck a girl and for me to go back and get her. I didn't give Mr. Frank clear away that time. I kept some things back. I don't remember now whether I told them at that time or not. I don't know whether I told them about going down the basement or not. The first time I told them I wrote the notes on Friday. They didn't tell me my story wouldn't fit. I don't remember them telling me anything about changing my statement. I told them that was all I had to say. They never told me they wanted me to tell anything else. They didn't say anything to me that it didn't sound right. Mr. Black talked to me right smart and Mr. Lanford talked to me a little. No, they never talked to me a whole day. As to why I changed my statement from Friday to Saturday, I put it on Saturday, because I was at the factory on Saturday." As to why I didn't put myself there on Saturday, the blame would be put on me. I didn't want them to know that I had written any notes for Mr. Frank. Yes, in that statement I told the officers I was going to tell the whole truth. I told them that I got up at nine o'clock, because there was nothing doing at the factory that day at the time. I said I was there at 9 o'clock, because he had done told me where to meet him at. Yes. I told them that I was going to tell the whole truth. Yes, the

reason I told them I left home at 9 or 9:30, because there was not anything doing at the factory at that time. I told them it was about 9 o'clock when I looked at the clock, because I don't know what time it was when I looked at the clock, and I told them I had some steay and some sausage for breakfast and a piece of liver and I drank some tea and bread. Well, there was some sausage, but I don't know whether I ate it or not. Yes, I had steak, liver and sausage for breakfast. I know I ate the steak and a piece of liver, and drank a cup of tea and ate some bread. I got up that morning at six o'clock. Yes. I told the officers I got up at 9 or 9:30. I don't remember anything else I told them. Yes, I told them that I went straight to Peters Street and went in the first beer saloon there, and drank two beers and gave a fellow a beer, that had a whip around his neck. I told them three saloons and I called two names. I don't know whether I told them about this whiskey or not. I told them I bought it between 10 and 10:30. No, that is not true. I told them that on account of my saying I didn't leave home until about 9 or 9:30. I bought it about a quarter to eight. The reason I told these lies about the time was because I didn't want to put myself at the factory twice, because there wasn't anything doing at the factory that morning. That is the only reason I told that story. I don't know when the first time was I told them I got there at 8 o'clock instead of 10 or half past, it was after I got out of jail up there. I guess I made most of these changes after I got out of jail. I don't know who the detective was I told about my not leaving home at 9 o'clock. Four of them were talking to me, all at the same time. I think it was Starnes and Campbell that I told that to, about changing the time. I don't remember whether I told them then that I was going to tell the whole truth. I told them that after I got out of jail, after I got back to headquarters. If you tell a story you know you've got to change it. A lie won't work, and you know you've got to tell the whole truth. Yes, I knew it was bound to come when I told it the first time. I didn't tell the whole truth then, because I didn't want to give the whole thing away then. In the statement where I told about my moving the little girl for Mr. Frank, the reason why I didn't correct it then about the time I bought the liquor, I don't know whether I did it then or not, but I did tell them. I told them I drank four or five beers that morning. I told them at the first saloon I bought two beers. I didn't tell them I bought any wine at that time. I told them I had some wine put in my beer. What they call wine. It wasn't any wine though. I don't know whether I told them that in the statement I made about moving the little girl or not. The wine was put in my beer at Mr. Earl's beer saloon on Saturday morning. I told that to Mr. Black and Mr. Scott, I don't remember when. As to my not testifying about that yesterday, you didn't ask me that. I remember telling you that yesterday. I remember saying I didn't buy any wine. No, I didn't say anything about putting beer in wine yesterday, but I remember I said something about putting wine in beer. I know I told you that yesterday. I don't remember telling them I started straight from Peters Street to Capital City Laundry. I told them I started for the Laundry after leaving Mr. Frank at the factory. If they have got it down

there, I must have said so. I don't remember saying it. I told them I met Mr. Frank at the corner of Nelson and Forsyth Street before I went to the factory. Yes, I told them I went from Peters Street and met him at the corner of Nelson and Forsyth before I went to the factory. As to why I told them that story, because I did meet him there. No, I didn't go straight from Peters Street to meet him at the corner of Nelson and Forsyth as I told them. I went straight from Peters street to the pencil factory. I don't remember when the first time I told the truth about it. I told it either to Mr. Starnes, Mr. Campbell, Mr. Black or Mr. Scott. I told it after I got out of jail, I remember telling the officers when he said "Ah, ha," when I met him at the corner. I don't remember telling the officers that he asked me where I was going and I told him I was going to the Capital City Laundry to see my mother. I don't remember saying that to the officers. If I did say that it was not the truth. As to why I lied about that, because I did tell Mr. Frank down there when I left the factory that I was going to see my mother. I told the officers he stayed at Montag's about twenty minutes. I did tell you yesterday that I didn't have any idea how long he stayed there, because I haven't any idea now. As to why I didn't say yesterday that it was twenty minutes, because you didn't ask me. I didn't tell Mr. Dorsey how long it was, because he didn't ask me what I told the detectives about it, but I told the detectives that. I told them that story because I didn't have any idea how long he stayed there. I don't know how long Mr. Frank stayed there. I told the officers twenty minutes as that was the best I could do about it, so I just told him twenty minutes. I told the detectives about wanting me to watch for him when I got back to the factory. I don't know why I didn't tell them that at the time I told them about moving the body. I don't remember who I told it to or when, but I told them. I did tell them about Mr. Frank stamping his foot. I don't know whether I told them at the time I told about helping move the body. I told it to Mr. Scott, Mr. Black, Mr. Campbell, Mr. Starnes and Mr. Dorsey. Mr. Starnes and Mr. Campbell wasn't in there sometimes when I told it. No, I didn't tell it to Mr. Scott and Mr. Black. They dropped the case and Mr. Starnes and Mr. Campbell taken it up. They came down and was talking to me for a month or more in my cell. Yes, I told Mr. Black about Frank stomping his foot and Mr. Scott. I told them all about it. Yes, I told the detectives that the first party I saw going up the factory after I got back from Montag's was Miss Mattie Smith. That was a mistake. I didn't see Mr. Darley go up after I got back from Montag's. No, I didn't say yesterday that I saw him go up after I got back from Montag's. I don't know whether Mr. Darley saw me or not. I was sitting right there at the box. He could have seen me if he had looked, so could Miss Mattie Smith. The rest of them could have seen me if they had looked. Yes, I told the officers the first time I saw them go up was after I got back from Montag's. That was not so. I was just mistaken about it. Don't know when I corrected the mistake or to whom. Yes, I stated it to Mr. Dorsey. It was after I came from jail. I have corrected it to Mr. Starnes and Mr. Campbell too. It was about 11:30 when Mr. Darley left the factory, right after we got

back from Montag's. It may have been about 11 o'clock. Miss Mattie Smith left the factory somewhere about 9:30. It was after we got back from Montag's that I saw Mr. Darley leave. Mr. Holloway and the peg-legged negro went upstairs and came down before Mr. Darley left the factory. They could have seen me sitting on the box, as they came out the factory. Mr. Holloway left about 10 or 15 minutes after Mr. Darley left. It may have been four or five minutes. After Mr. Holloway left, I told them Mr. Quinn came in. I may have told them that a lady dressed in green was the next one. That wasn't true. A lady in green did go up before Mr. Darley came down. She came down before Holloway and Darley left. If I told the officers that she went up after they left, I made a mistake. Mr. Quinn was the next man that went up after Mr. Holloway came down. Yes, I said that yesterday. Yes, I said yesterday Mr. Quinn was the last man I saw come down. No, I didn't say yesterday Miss Monteen Stover came down after Mr. Quinn came down. I might have told the officers that I saw Mr. Holloway return upstairs, turn to the right toward Hunter Street and go in the factory. If I did, I made a mistake. I don't remember all the mistakes I made. No, I have never told about a lady going up there after them six or seven minutes, I was mistaken. I don't know whether I have ever corrected that mistake or not. She went upstairs and Mr. Quinn went up and came down before she did. If I told the officers she stayed there 7 or 8 minutes and came right down, I made a mistake. I don't think I corrected that mistake at all. I don't know how long it was after she came down before any body else went up and down. If I told the officers it was 10 or 15 minutes that was a mistake. I don't think I corrected that mistake at all. I haven't got any idea at all how long before the lady in green came down that anybody else went up. Yes, I told Mr. Scott and Mr. Black that the only people who went up at all were Miss Mattie Smith, Darley, Holloway and the woman in green, and nobody went up and down until Mr. Frank whistled. No, that wasn't true. The reason why I told that story was because I didn't want them to know that these other people passed by me, for they might accuse me. The reason why I didn't tell them was because I didn't want people to think that I was the one that done the murder. I told them that I saw those four men go up because I didn't think they saw me sitting there, and I didn't tell of seeing the other people for fear they would report on me. The reason why I told the police about those four going up there, because that is all I could remember that went up and down. I don't know when my memory got fresher about other people going up and down. I think it was after I got out of jail. I think I corrected that with Mr. Starnes, Mr. Campbell and Mr. Dorsey, at police headquarters. After I corrected with the detectives down at headquarters, they took me to Mr. Dorsey's office. I have been in Mr. Dorsey's office three times. Mr. Dorsey was down at headquarters with me I think about four times. As to whether it took Mr. Dorsey about seven times to get my testimony straight, it didn't take him that long to get it straight, it took that long for me. As to why I didn't tell it all, I didn't want to tell it all. I was intending to hold back some. I didn't want

to tell it all right at one time. I just told a little and kept back a little. Yes, and Mr. Dorsey went down seven times while I was telling some and holding back some. They didn't ask me to take back any stories. No, it didn't take Mr. Dorsey seven times to tell the story. Yes, I said I added to it every time he went down. But he wouldn't come back and try to do anything with it. I didn't tell the officers that I went to a moving picture show after I left the factory. I said I looked at the pictures from the outside. I told them I went on Peters Street and looked at the pictures from the outside. I stayed there about ten or fifteen minutes. I drank two glasses of beer. I don't know whether it was in the first, second or third statement that I told about watching for Mr. Frank. Two of the detectives were there. Yes, I locked the front door that Saturday of the murder. I don't know what time. It was somewhere after dinner. I can't give you any estimate. It was later than 12 o'clock. It wasnt one o'clock, because it was four minutes to one after I went upstairs and came downstairs and unlocked the door. Yes, I heard the stamping before I locked the door, and I heard the scream before I heard the stamping. After he stamped for me I went and locked the door. I couldn't tell to save my life how long the door stayed locked. I was upstairs between the time I locked the door and the time I went down and unlocked it. I unlocked the door before I went upstairs. I locked the door when he stamped and I unlocked it when he whistled. As soon as he whistled I unlocked the door and went upstairs. Mr. Frank sent me back in the metal department. He wouldn't go back there with me. When he whistled that was the signal for me to unlock the door and the stamping was for me to unlock the door. He showed me how to lock the door that day. He showed me how to lock the door on Thanksgiving Day too. I don't know how he came to show it to me again. I guess he thought I forgot it. When I went down to leave the doors were unlocked, both doors were unlocked. The only thing I remember Mr. Frank telling me was not to let Mr. Darley see me around the door, that a young lady would be up there after awhile to chat, and he wanted me to watch for him. No, he didn't tell me what he wanted me to meet him at Nelson and Forsyth Street for. Yes, I could have come back to the factory just as well as going to meet him at Nelson and Forsyth Street if he had told me that. I don't know why he told me to meet him at Nelson and Forsyth. I don't remember telling the officers that I met him accidentally at Nelson and Forsyth Street. Mr. Frank stayed at Montag's about an hour. Mr. Frank went to Montag's between 10 and 10:30 and stayed about an hour. I guess it was about a half an hour. Mr. Frank didn't say a thing about why he wanted me at the corner of Nelson and Forsyth Street. Before we went to Montag's he said he didn't want me to say anything to Mr. Darley that there was going to be a young lady there after a while, and he told me that again after we came back from Montag's. Mr. Frank gave me that signal about stamping and whistling on Thanksgiving Day and he repeated it again that day. I told yesterday how he done it, like I am telling now. I think I am telling the truth now. We had been back from Montag's about five minutes when the lady in the green dress went up. She

stayed up there a good little while, ten or fifteen minutes. I didn't tell the officers the peg-legged negro went up first. I didn't tell them in the first statement. I may have told them in the next statement. The peg-legged negro didn't stay up stairs no time. Came back down with Mr. Holloway. Mr. Darley came down five or ten minute after Mr. Holloway came down. Yes, that was after he came back from Montag's. I have no idea what time it was. After Holloway came down, the lady with the green dress came down. She went on out and Mr. Quinn came in. He went up and came down before Monteen Stover came in and before Mary Phagan came in. Yes, I am certain of that. No one else came in after Mr. Quinn except Mary Phagan. Mr. Quinn, Monteen Stover and Mary Phagan went in almost the same time. They went and came out almost together. Quinn first, Mary Phagan next and Monteen Stover next. Mr. Quinn had already come out of the factory when Mary Phagan went up. I didn't see Mrs. Barrett, or Miss Corinthia Hall or Miss Hattie Hall or Alonzo Mann, or Emma Clarke. I didn't see none of them. I never saw Mrs. White go in there at all that day. I was sitting on the box all the time. I got up twice to make water. I made water against the elevator door, right in front of the elevator shaft. Miss Stover had done gone then, and Mr. Quinn also. I went to sleep after Miss Monteen Stover came down. Don't know how long I was asleep, maybe ten of fifteen minutes. I heard the scream before I went to sleep, before Monteen Stover ever went in there. Mr. Quinn had already gone. I told the officers I didn't see Mary Phagan go up at all. I didn't tell them I heard any scream. I don't know when I first told that story. I told Mr. Starnes and Mr. Campbell. That was after I got out of jail. I said I heard the scream before I went to sleep, which I did. Monteen Stover came up and went down before I went to sleep. I told Mr. Starnes and Mr. Campbell about somebody running back on tiptoes. I don't know when I told them. He woke me up stamping, then I locked the door, and went to the box and kicked on the side of the elevator door. It was about ten or fifteen minutes after he stamped that I heard him whistle. When he whistled I unlocked the door. I don't know when I first told about Mr. Frank standing at the top of the stairs, trembling and nervous. I told Mr. Dorsey, Mr. Starnes and Campbell. I don't know why I didn't tell it the day I told them I was going to tell the whole truth. I didn't mean to keep back anything then. That day I told them everything I remembered. When I got to the top of the stairs, Mr. Frank had that cord in his hands. I don't remember when I first told about that. If I didn't tell it that day when I said I was telling the whole truth, I just didn't remember it. When I told Black and Scott that I was telling the whole truth I didn't say anything about Mr. Frank having hit the little girl. I thought I had told them that. I have told that to some of the officers. I remember now that I told them that. He told me to get her out of there some way or other. He didn't say she was dead. I didn't know she was dead. I went back there and found the cord around her neck. When I looked at the clock it was four minutes to one. That was after I went and seen the girl was dead, and he told me to bring her up there. I was

standing at the steps. I could see the clock from there. Then I went back and got a piece of striped bed tick, something like your shirt there, had whitish looking stripes on it. I taken the cloth and spread it down and rolled the little girl in the cloth and tied it up. When I laid her down in the cloth, I tied the cloth around her. I did my best. Her feet were hanging out of the cloth, also her head. If I didn't tell Black and Scott anything about the hat and the slippers and the ribbon, they must not have asked me. I know I took the things and pitched them in front of the boiler. The elevator don't hit hard when it hits the ground. The wheels at the top don't make any noise. The motor makes a little noise, something like a June bug. The elevator hits the dirt at the bottom, but it don't make any noise. I left the factory about 1:30. The reason why I didn't tell Scott and Black I wrote four notes instead of two, they didn't ask me how many I wrote. Another reason why is, because Mr. Frank taken that and folded it up like he wasn't going to use it. I wrote three notes on white and one on green paper. The green one is the one he folded up like he wasn't going to use it. I don't know how long it took me to write those notes. It took me somewhere about two minutes and a half, I reckon. The reason I didn't tell Scott and Black about burning the body, because someone had done taken them off the case. Mr. Scott told me. The first time I told that was to Mr. Starnes and Mr. Campbell after I came back from jail. I don't remember telling the officers that Mr. Frank told me he was going to send those notes to his folks up North. If they have got it down there I must have said it. He told me he was going to write to his mother and tell her that I was a good negro. The reason I didn't take the parasol down with the shoes, it was too far back for me to see it. I got my hair cut last week. My lawyer sent the barber. They gave me a bath and bought me clean clothes. My wife gave me my shirt. I didn't read any newspapers on Monday about this crime. It don't do me no good because I can't make any out. I didn't try to read any that day. I washed that shirt on Thursday, May 1st, in the metal room about half past one or two. As to how that dung came to be in the elevator shaft, when Mr. Frank had explained to me where he wanted to meet me and just as I started out of the place that negro drayman came in there with a sack of hay and I gave him a drink of whiskey that I bought at Earley's saloon on Peters Street that morning, and he suggested that I go down in the basement and do it, there's a light down there, and I went down the ladder and stopped right by the side of the elevator, in front of the elevator, somewhere about the edges of it. No, I didn't see the two white men go up and talk to Mr. Frank in his office that day. No, I didn't see a man by the name of Mincey at the corner of Carter and Electric Avenue that day. I didn't tell him that I killed a girl that day. I didn't say I killed one to-day and I didn't want to kill another. I didn't tell Harlee Branch that Mary Phagan was murdered in the toilet room on the second floor, or that the body was stiff when I got back there, or that it took at least thirty minutes to get the body down stairs and write the notes. I don't remember telling Miss Carson on May 1st, that Mr. Frank was innocent. I didn't have any conversation with

Miss Mary Pirk on April 28th and she didn't say that I committeed the crime and I didn't shoot out of the room immediately after she said that I didn't tell Miss Carson on Monday that I was drunk all day Saturday. I didn't see her at all on Monday. I didn't tell Mr. Herbert Schiff on Monday that I was afraid to go on the street, that I would give a million dollars if I was a white man. I said if I was a white man I would go on out. I didn't say nothing about no million dollars because I don't know what it takes to make a million. I didn't ask Miss Small on Monday what the extra had in it and I didn't say Mr. Frank is just as innocent as you are. I didn't ask Miss Fuss on Wednesday for an extra, I didn't tell her that I thought Mr. Frank was as innocent as the angels in heaven.

RE-DIRECT EXAMINATION.

I never was in jail until April 26th. I have been down at police headquarters several times. First time I was arrested was for throwing rocks. I was a small boy then. I was arrested another time for fighting black boys, then I was arrested about drinking and disorderly, and the last time I was arrested was about fighting again. I never have fought with a white man or white woman. Police officers took me down to jail and to door where Mr. Frank was. I never did see Mr. Frank in jail. The last time I saw Mr. Frank was in the station house before I had talked. He looked at me and smiled and bowed his head. While I was writing the notes, Mr. Frank took the pencil out of my hand and told me to rub out that "a" I had down there on the word "negro." I saw Mary Phagan's pocketbook, or mesh bag, in Mr. Frank's office after he got back from the basement. It was lying on his desk. He taken it and put it in the safe. When I went back to see about the girl, it wouldn't have taken more than about a minute to go down and lock and unlock the door. He had time enough to do it. Mr. Scott talked to me about three hours and a half one Thursday. Mr. Frank told me he would send me away from here if they caught me. He would get me out on bond and send me away. I never saw Mincey before seeing him at the station house in Mr. Lanford's office. I had orders from Mr. Frank to write down how many boxes we needed and give it to him. I didn't tell Mr. Black or Mr. Scott about the mesh bag because they didn't ask me. I disremember when I first told about it. I think it was after I was in jail. I told Mr. Dorsey about it after I came out of jail. Mr. Frank knew for a whole year that I could write. I used to write for him the word "Luxury," "George Washington," "Magnolia," "Uncle Remus," "Thomas Jefferson," that's the name of pencils. I spell "Uncle Remus" "O-n-e Rines." I spell "Luxury" "L-u-s-t-r-i-s." I spell "Thomas Jefferson" "T-o-m J-e-f-f or J-e-i-s-s." I spell "George Washington" "J-o-e W-i-s-h-t-o-n." After Mr. Frank found out what I meant he understood it. I spell "ox" "o-x." Yes I wrote him orders to take money out of my wages. The pocketbook was a wire looking whitish looking pocketbook, had a chain to it. You could take it and fold it up and hold it in one hand. When I

wrote the word "Luxury" and "Thomas Jefferson," I didn't have anything at all to copy from. I was writing it down for Mr. Frank.

MRS. J. A. WHITE, recalled for the State.

I have seen this man before at police headquarters (indicating Conley) about a month after the murder. At that time I did not identify him as being the man I saw sitting on the box. The man sitting on the box was about the same size as Jim Conley. I couldn't state it was Jim Conley. He was sitting in a dark place, and he looked black to me. He had on dark clothes. I don't know whether he was bareheaded or not. I told Bass Rosser about this on May 7th. That was the first time I told of it.

CROSS EXAMINATION.

I told the detective about this as soon as I saw one. I never kept it a secret from anybody. I spoke to Mr. Wade Campbell about seeing the darkey. I didn't tell him that I saw the negro as I went up into the factory about 12 o'clock. I didn't tell him that, when I came down the steps the last time, I didn't see anybody.

C. W. MANGUM, sworn for the State.

I had a conversation with Mr. Frank at the jail about seeing Conley and confronting him. Conley was on the fourth floor. Chief Beavers, Chief Lanford and Scott came down to see Mr. Frank with Conley and asked me if they could see him. I went to Frank and told him the men were there with Conley and wanted to talk with him if he wanted to see them. He said, "No, my attorney is not here and I have nobody to defend me." He said his lawyer was not there; that no one was there to listen at what might be said.

N. V. DARLEY, recalled for cross-examination.

On the ground floor the door to the Clark Woodenware Company was nailed up immediately after that company left there. We found it broken open after the murder and we nailed it up again. It was two or three days after the murder. Sitting at Mr. Frank's desk, the most that one can see is about half of clock No. 2, which is on the left of clock No. 1. If the safe door was open in the outer office, you have no view into Mr. Frank's office from the outside. You might tiptoe and look over the door. A man of my height could just tiptoe and see over it. The packing room next to Mr. Frank's office works from 11 to 17 ladies and men. Passing by elevator shaft as you go in building on ground floor, you come to a door to Clark Woodenware Company's place, which was nailed up immediately after that company left there. We found it broken open after the murder. I don't know what day, it must have been two or three days after, and we nailed it up again.

(Witness identifies various portions of factory from the factory model—Defendant's Exhibit 4). There is no lounge, sofa, cot or bed in the whole factory. I found two boxes down in the basement in Clark Woodenware side of old dirty, rotten stuff, too dirty and rotten for a human being to rest upon. It's boggy in there. They had on top of them some dirty, filthy, nasty crocus sacks. There is no lounge, bed, sofa or anything of the sort in the metal room. I have never seen a chair in there. I have never seen any blood under the machine that Barrett claims he found hair on. I never saw any blood on the place the negro claims the little girl's body was lying. You can get into the metal room either from the front or the back if the back door is open. You can lock the back door from the inside. There is a cross bar across the door. The rule was to keep it locked, but a great many times I found it unlocked. It was very dark around the elevator on the first floor on April 26th. It was a cloudy day and darker than usual because the front doors were closed. It's too dark to stand on the outside and see through the elevator. I left the factory with Mr. Frank on his way to Montag Brothers. I never saw Jim Conley that day. I never saw Mr. Frank talk to him or speak to him or come into contact with him in any way that day. I have never goosed or pinched Jim Conley or jollied with him. I kicked him when I caught him loafing, and sometimes I would take a piece of board to him and he would laugh every time I did it. I have never seen Mr. Frank goose or pinch him or play with him or jolly him. No, I never knew Daisy Hopkins. I have never seen Dalton until this morning. From June, 1912, until January, 1913, I left the factory at twelve o'clock on Saturdays, and usually came back between five and six. I did that most every Saturday during the two years that I have been there. I may have missed sometimes, but not many. Only on one occasion do I recall that Mr. Frank said he would not be there on Saturday afternoon. I would visit the factory every Saturday afternoon between five and six to find out how the financial was for the week. I found Mr. Frank in his office on every occasion except the one I have mentioned above. Mr. Schiff would help him on the financial. A few Saturdays I have gone there and Mr. Schiff was not there. He may have been on his vacation. I hire and discharge all the help. I come in contact with the help ninety per cent. more than Mr. Frank. Mr. Frank has nothing to do with employing or discharging them. On Saturday, Holloway is supposed to leave the factory at four o'clock and the night watchman comes on. We had no negro night watchman there last September as stated by Mr. Dalton. Our night watchman was Mr. Kendricks, a white man. The first time we ever hired a negro night watchman was three weeks before the murder. As to who else stayed at the factory on Saturday afternoons, usually the office boy, sometimes the stenographer, Walter Pride, who cleans up the third floor. I have never known any other time but Saturday that the financial sheet was worked on, except possibly a holiday. I saw Conley on Monday. He looked to be excited and when I spoke to him he failed to look up as he usually does. I went around the factory that morning and looked at everybody

to see if I could pick out a man that looked suspicious, and Jim Conley was the man I thought looked most suspicious. The latter part of last year I issued orders that the sweepers must stop cleaning up by twelve o'clock and if they hadn't cleaned up by that time they would have to knock off and leave the factory. If they stayed there after twelve o'clock I didn't know anything about it. Harry Denham usually stayed in the factory every other Saturday afternoon to clean the motor and oil the machinery and he selected someone to stay with him. He would do this about twice a month. The girls in the packing department did quite some overtime work on Saturday afternoon.

RE-DIRECT EXAMINATION.

I have made no contribution toward the fund to defend Frank. I don't know anything about Daisy Hopkins' general character. I don't know who nailed up the door on the Clark Woodenware side. Lots of people have been there all over the factory. If a body had been shot down the chute, behind those boxes, it would have been hidden more than where it was found. The boxes around the chute are piled nearly to the top. I never noticed any difference in the boxes Sunday from what I left them there Saturday. No, I don't know anything about Conley being there Saturday afternoons and watching. He wasn't there by my instructions. There is a good deal of water on the floor of the metal room. On payday in order to keep the people from coming down the back, the instructions are always to close the back door to the metal room. There is no special reason for the paint to go out of the polishing room, but it is out in other places. It is carelessly done. You can see haskoline scattered around. The floor in metal room where body is supposed to have been found has a rise of several inches in it, something like an edge. As to whether a man standing up and looking over the safe door hasn't got a vision going beyond the clock so that he could see everybody that registered, he couldn't see it. I tried it. I don't know whether either the clock or the desk has been moved before I went to see. My recollection is that the table is nailed to the wall and the clock screwed to the table. You can tear the whole thing up and move it. The desk could not be moved without my knowing it. I didn't have the clock fixed after April 25th.

RE-CROSS EXAMINATION.

On Friday last I made an experiment by sitting at Frank's desk and leaned over as far as I could see through the outer door towards the clock. I could see half of the circle on clock No. 2. I could not see any of the other clock at all. The clock and desk could not have been moved without my instructions. The paint is scattered all round. It gets all over the place and we can't prevent it. We never have washed the metal room floor since I have been there. We never found any water or blood where it was said the girl's body was found in the metal department. The view I got from front door on April 26th into area around elevator shaft was blocked by boxes.

RE-DIRECT EXAMINATION.

I communicated immediately with the police when we found the blood back there. I think Harry Scott was the first man I reported Conley's nervousness to. It was on Monday, April 28th.

E. F. HOLLOWAY, recalled for cross examination.

I am the day watchman and time keeper. I look after the register to see that everybody registers. No, it was not a habit of Conley to register or not as he pleased and to get his pay anyhow. If he didn't register I always got after him. I applied the same rule to him as I did to anybody else. I never saw Mr. Frank goose, pinch or joke with Conley. I never saw him touch him in any way, unless it was when he would go in the office to borrow money, I would see him hand him a quarter, or something. He surely was a good hand at borrowing, but Mr. Frank would never let him have a nickel but what he owed him. Up till twelve months ago the sweepers stayed at the factory until about 2:30, but then they made a rule that any sweeping that wasn't done by noon on Saturday would have to go over until Monday and since that time no negroes have been there since 12 o'clock. We never had any negro night watchmen in July, August, September, or any time last fall. We never had a negro night watchman until we hired Lee, which was about three weeks before the murder. Since June of last year, on Saturday afternoons, I always stayed around the factory and looked after seeing that nobody came in or out, unless they had business. I never have seen anybody goose Conley. Sometimes I would kick him to make him go on to his work. The door that leads to the Clark Woodénware place never was locked. It was nailed up when the Clark Woodenware moved out of there. I nailed it up myself. It was open on the Monday after the murder. It led back to a chute in the rear, and to two waterclosets on the right. Nobody occupies that now. I was at the factory every Saturday since last June excepting legal holidays when the factory was shut down. I did not miss a single Saturday in July, August, September, October, November, December, and January, excepting legal holidays. On Thanksgiving day I stayed there until 12 or 1 o'clock. I have never missed a Saturday since I have been working at the factory. I would be relieved on Saturdays at 4:30 p. m. I would go all over the building trying to see that everything is all right. That was my business. I have never known Mr. Frank to have any woman on Saturdays excepting his wife. She came there on Saturdays and went home with him, about once a month. Mr. Schiff helped Mr. Frank on his books on Saturdays. Conley never did watch the door down stairs. If he did, it must have been after 4:30 p. m. I never did see him giving signals to Mr. Frank and Frank giving him signals from upstairs. I was obliged to have seen them if he had watched the door. I sat mainly in the front of the building to see that nobody came in the building. I do not recall any Saturday afternoon that Frank and Schiff missed

except when Schiff was off on his vacation. I have never seen any of them bring any women in there or take any out. I have never been sick or missed a single Saturday since last year. I would leave about 4:30 Saturday afternoon. I have never seen Dalton in the factory at all. I wouldn't have let a fellow like that in the building unless I knew what his business was. There was nobody practicing any immoralities ~~in the building.~~ If they did I would know it. I would have put them out quickly. Daisy Hopkins quit sometime in May or June last spring. She has never been there since she quit. Mr. Darley left the factory between 9 and 10 o'clock on April 26th. He was not there after 11 o'clock at all. If he was, he was there after 11:45, the time I left there. I have never seen the front doors locked on Saturday. I was at the factory until noon on Thanksgiving day. I saw no girls with white shoes and stockings there that day. I never saw Jim Conley that day. I never saw any woman at the factory that day. I sure would have seen Conley ~~had he~~ been watching the door that day. I have seen ~~Mr. Frank at the~~ factory every Saturday afternoon after he comes back from lunch. I would pass in and out of his office three or four times in the afternoon. I have never seen a glass of beer as ~~long~~ as I have been there. I have never seen any women up there. He would be working on his books. Mr. Schiff would be helping him. The stenographer and shipping clerk would sometimes be up there. People would be liable to drop in there on business and I would send them up to Mr. Frank's office. I always kept the door on Saturdays. I never turned it over to Conley or anybody else. I have let Mrs. Frank in and would tell her to go up in the office and have a seat. This man Wilson worked on Saturday afternoon most all the time. Oiled up the motor and cleaned it while the factory was closed. Pride, Harry Denham, Charlie Lee, and Fast usually worked there on Saturday oiling the machinery after they shut down and different things. They were not shut off by any doors from going anywhere they wanted in the factory. They were liable to come down and around any time. I have never seen the doors either to the outer or inner office of Mr. Frank locked. They have got glass fronts in them that you can see through, and it would not have done any good to have shut them. The windows in Mr. Frank's office looked right out on Forsyth street. The shades to them are torn up so they don't amount to much. In the morning they will pull them down to keep the sun out. When they are up you can see across the street. Salesmen frequently visited Frank on Saturday afternoons when they came in from their runs without any announcement. I have never known Mr. Frank to refuse to see any of them. It is very dark about the elevator shaft on the ground floor. The shaft is about ten or twelve feet from the steps. If a girl was coming down the steps and a man was in that dark place it would be a very easy job for him to throw her down the shaft. He could grab her before she ever saw him because she would be looking toward the door. The members of the firm of Montag Brothers frequently visited the factory on Saturday afternoons. I remember seeing Drayman McCrary on April 26th. He came around to see if there was any hauling. I don't

remember the time. I never saw Conley on April 26th. If he was there he was skulking around and hiding. I never saw McCrary talking to him that day. On Monday morning I saw Conley, instead of being upstairs where he ought to be sweeping, he was down in the shipping room watching the detectives, officers and reporters. I caught him washing his shirt. Looked like he tried to hide it from me. I picked it up and looked at it carefully and it looked like he didn't want me to look at it at all. The day before that he went out with a pair of overalls corresponding to this blue shirt that he has, and he said he wanted to carry them to a negro at Block's candy factory and he had not had time to have gone to the candy factory before he came back and said that they were taking stock over there and would not let him in. The overalls had been washed and dried and I could not tell if there is anything on them or not. I don't know whether he can write or not. At your request to-day I walked from the middle of the car track at the corner of Broad and Hunter to the pencil factory and then upstairs in Mr. Frank's office. I walked just in an ordinary way like I thought a lady would walk. It took me two and a half minutes. I walked from the corner of Marietta Street and Forsyth Street to the pencil factory. It took me six minutes.

RE-DIRECT EXAMINATION.

I didn't have any conversation with Kendrick, the night watchman, since this murder was committed as to whether or not Frank ever called him after he left the factory that night. No, I did not try to get Kendrick to swear that. No, I didn't tell Whitfield the day before they turned up that big club "Be sure to come back to-morrow, you will be certain to find something." So far as I know the general character of Daisy Hopkins is good. I don't remember telling you the contrary. I don't deny signing that affidavit. (Ex. "I" State.) I don't remember telling you in this paper (Ex. "I" State) "She is anything but a nice girl. You can't depend on what she says." Yes, I said it in the affidavit I gave it was 10:45 when Mr. Frank and Mr. Darley left. Mr. Frank got back about 11 o'clock. That was all guess work about the time they left. I never said anything about getting the reward for Jim Conley. I told some of the detectives several days after they came down after the negro if this negro is convicted he is my negro. I knew about the reward being offered. If I told you that I sometimes left the factory at three o'clock I meant four o'clock. Jim Conley worked regularly at the factory except when he was in the stockade thirty days. Conley registered every morning, but a lots of times he would not register at dinner and sometimes at night. I nailed up the door that leads into the Clarke Woodenware place on Monday because we never let that door stand open. Mr. Darley told me to do it. I know it was not open on Saturday. It was nailed up Saturday noon when I left there and it was open Monday when I got there. The chutes back there were nailed up. The one next to the rear end of the building I know was nailed up to keep the Clarke Woodenware people from coming up through there. Boxes were piled up back in there. That stairway back there has been nailed up for

some time. Hasn't been used since Christmas. If the negro went out and bought beer I didn't know it. I never saw him. I don't recollect whether the drayman was up there April 26th to get his pay or not. There was so much excitement in the factory on Monday that we shut down about 9:30. Nobody stayed at their work. Jim Conley quit work like everybody else and went out. As to one thing that Conley did that the others didn't do I haven't got any. The shirt he was washing was the same shirt he had been wearing all day. I say that he was trying to hide the shirt because he was trying to push it over behind the pipe where you couldn't see it. He had the shirt on when he was arrested. He was not trying to hide it then.

RE-CROSS EXAMINATION.

I was subpoenaed to Mr. Dorsey's office by regular court subpoenas. I thought I had to go there. There were three or four men when I got there.

GEORGE EPPS, re-called for cross examination.

I was present on Sunday after the murder when a gentleman came out to the house and talked to me and my sister about when was the last time we had seen Mary Phagan. He didn't ask me, he asked my sister. I wasn't there. I was in the house. I didn't hear him ask my sister that.

HARRY SCOTT, re-called for State.

It took Jim Conley two or three minutes to write out the notes that I dictated to him.

CROSS EXAMINATION.

I knew on Monday that Mrs. White claimed she saw a darkey at the pencil factory. I gave that information to the police department. Mr. Frank gave me the information when I first talked to him. I never inquired of Frank or any of the pencil factory people if Conley could write. Sunday, May 18th, I was present when Conley made his statement. May 18th. I wrote it out myself. (Defendant's Exhibit 36.) He made no further statement on that day. He stated that he did not go to the pencil factory at all that day. At that time I knew he could write. He told me everything that was in that statement. The information that Conley could write came from the pencil factory on May 18th. On May 18th I dictated to Conley these words: "That long tall black negro did by himself." I dictated each word singly and I should judge it took him more than six or seven minutes to write it. He writes quite slowly. When he was brought before Mrs. White to see if she could identify him he was chewing his lips and twirling a cigarette in his fingers. He didn't seem to know how to hold on to it. He could not keep feet still. He positively denied on May 18th that he had anything to do with the murder of Mary Phagan and that he was at the factory at all. We talked

very strongly to him and tried to make him give a confession. We used a little profanity and cussed him. He made that statement after he knew that I knew he could write. We had him for about two or three hours that day. He made another statement on May 24th which was put in writing. (Defendant's Exhibit 37.) He was carried to Mr. Dorsey's office that day and went over the statement with Mr. Dorsey. He still denied that he had seen the little girl the day of the murder. He swore to all that the statement contains. That statement was a voluntary statement from him. He sent for Mr. Black and we went there together. We questioned him again very closely for about three hours on May 25th. He repeated the story that he told in his statement of May 24th. We saw him again on May 27th in Chief Lanford's office. Talked to him about five or six hours. We tried to impress him with the fact that Frank would not have written those notes on Friday. That that was not a reasonable story. That showed premeditation and that would not do. We pointed out to him why the first statement would not fit. We told him we wanted another statement. He declined to make another statement. He said he had told the truth. On May 28th Chief Lanford and I grilled him for five or six hours again, endeavoring to make clear several points which were far-fetched in his statement. We pointed out to him that his statement would not do and would not fit. He then made us another long statement on May 28th (Defendant's Exhibit 38), having been told that his previous statement showed deliberation; that that could not be accepted. He told us then all that appears in the statement of May 28th. He never told us anything about Mr. Frank making an engagement for him to stamp for him and for him to lock the door. He told us nothing about seeing Monteen Stover. He did not tell us about seeing Mary Phagan. He said he did not see her. He didn't say he saw Lemmie Quinn. Conley was a rather dirty negro when I first saw him. He looked pretty good when he testified here. Frank was arrested Tuesday morning at about 11:30; on May 29th we had another talk with him. Talked with him almost all day. Yes, we pointed out things in his story that were improbable and told him he must do better than that. Anything in his story that looked to be out of place we told him wouldn't do. After he had made his last statement we didn't wish to make any further suggestion to him at that time. He then made his ~~last~~ statement on May 29th (Defendant's Exhibit 39.) He told us all that appears in that statement. We tried to get him to tell about the little mesh bag. We tried pretty strong. He always denied ever having seen it. He never said that he saw it in Frank's office, or that Frank put it in his safe. We asked him about the parasol. He didn't tell us anything about it. He didn't tell us anything about Frank stumbling as he got on the street floor at the elevator and hit him. Since making this statement on May 29th I have not communicated with Conley and have not seen him. He never told us that he came from his home straight to the factory. He denied knowing anything about the fecal matter down in the basement in the elevator shaft. He never said he went down there himself between the time he first came to the factory and went to Montag's. He never said he thought the name of

the little girl was Mary Perkins. He never said anything at all about Mary Perkins. We pressed him that day as to whether he saw Mary Phagan or not. He finally told us that he saw her dead body. He never did tell us that he heard a lady scream though we asked him about it. He said he did not hear anybody scream while he was sitting on the box. He said he didn't hear anything at all that day. He never said anything about Mr. Frank having hit her, and having hit her too hard. He never said anything about somebody running on tiptoes from the metal department and back again. He said he did not hear any stamping. He did not tell us anything about Mr. Frank telling him how to lock the door. He did not tell us anything about Frank having a cord in his hand at the top of the steps or that Frank looked funny about his eyes or that his face was red. He didn't tell us that he went back there and found the little girl with a rope around her neck and a piece of underclothing or that he went back to Mr. Frank and told him the girl was dead, or that he wrapped her in a piece of cloth. He said it was a crocus sack. He did not say anything about Mr. Frank saying "Sh-sh." He didn't say that he put the sack on his shoulder and that body dangled round about his legs. He said he never saw the ribbon; didn't know where it was. We asked him whether there was any thought of burning the body and he said not. He didn't know anything about that. He never said anything about his promising to come back and burn the body or that he said to Mr. Frank "You are a white man and done it, and I am not going down there and burn it myself"; or that Mr. Frank had arranged to give his bond and send him away; or that Frank said he would have a place to get in by when he came back to burn the body, or said he owed a Jew ten cents and paid it. He did not tell us of any conversation he had with Mr. Frank on Tuesday after the murder in which Mr. Frank said "If you had come back on Saturday and done what I told you there wouldn't have been any trouble." As to the scene between Conley and me when I undertook to convince him that I knew he could write on Sunday, May 18th, I called him up at Chief Landford's office, gave him a paper and pencil and told him that we understood he said he couldn't write and now we knew he could write and we wanted him to write what we told him. He sat there and looked at us while we were talking and I told him to write as I dictated and he picked up the pencil and wrote immediately. We convinced him that we knew he could write and then he wrote.

RE-DIRECT EXAMINATION.

I got information as to Conley writing through my operations while I was out of town. McWorth told me when I returned. I got no information personally about Conley being able to write from the Pencil company people. Personally I did not get information as to Conley's being able to write from Pencil company. I got it from outside sources, wholly disconnected with the Pencil company. As to whom I first communicated anything about Mrs. White's statement about seeing a negro down there, my impression is I told it in my many conversations with Black, and Chief Lanford and Bass Rosser.

Don't know the day. It was shortly after April 28th. After Conley made his last statement Chief Beavers, Lanford and I went to the jail with Conley and saw the Sheriff and he went to Frank's cell. The last time I saw Frank was Saturday, May 3rd. As to whether Mr. Frank refused to see me, only through Sheriff Mangum, as to the number of matters I told Conley didn't fit the first time and those I told him didn't fit the last time, I could not name those, that would almost be impossible unless I had the statement clear in my head. I never suggested what to put in or what to substitute or what to change. They came from Conley himself.

THE STATE RESTS.

EVIDENCE FOR THE DEFENDANT.

W. W. MATTHEWS, sworn for the Defendant.

I work for the Georgia Railway & Electric Co. as a motorman. On the 26th day of April I was running on English Avenue. Mary Phagan got on my car at Lindsey Street at 11:50. Our route was from Bellwood to English Avenue, down English Avenue to Kennedy, down Kennedy to Gray, Gray to Jones Avenue, Jones Avenue to Marietta, Marietta to Broad, and out Broad Street. From Lindsey Street to Broad Street is about a mile and a half or two miles. We make frequent stops. We were scheduled to arrive at Marietta and Broad at 12:07 1-2. We were on schedule. We stayed on time all day. Our car turned up Broad St. Mary Phagan got off at Hunter and Broad. It takes generally from two and a half to three minutes to go from Broad and Marietta to Broad and Hunter. That is a very congested street and you must go slow. I was relieved at Broad and Marietta by another motorman, but sat down in the same car one seat behind Mary Phagan. Another little girl was sitting in the seat with her. We got to Broad and Hunter about 12:10. Mary and the other little girl both got off and walked to the sidewalk and they wheeled like they were going to turn around on Hunter Street, both of them together. The pencil factory is about a block and a half from where they got off at Hunter and Broad. Nobody got on with Mary at Lindsey Street. There wasn't any little boy with her. The first time I noticed the little girl sitting with Mary was when we left Broad and Marietta Street and I went back into the car and saw this little girl sitting with her. I know the little Epps boy. I have seen him riding on my car. He did not get on the car with her at Lindsey Street. I saw Mary's body at the undertaker's. It was the same girl that got on my car.

CROSS EXAMINATION.

I did not tell one of the detectives that we might have been running three or four minutes ahead of schedule that day. I remember that Mary did not

get off the car at Broad and Marietta because there was a street car conductor sitting behind me, an ex-conductor and he had a badge on his coat and I looked at it and it had a little girl's picture and I reached over to where Mary was and said, "Little girl, here is your picture," and she said, "No, it is not." I don't know who the other little girl was sitting with her. The other little girl was dressed something like Mary. I didn't pay much attention to their dresses, but they looked sort of alike. Mary's dress wasn't black. It was light colored. I know Epps since this case came up. I could identify him. I never paid much attention to her hat. It was light colored I reckon but I am not sure. It just seemed that way.

RE-DIRECT EXAMINATION.

I identified Mary's body Sunday afternoon after the murder at the undertaker's. There was no doubt about her being the same girl. I knew her well by sight. She rode on my car lots.

RE-CROSS EXAMINATION.

I can't tell you whether that is the hat or not she wore.

W. T. HOLLIS, sworn for the Defendant.

I am a street car conductor. On the 26th of April I was on the English Avenue Line. We ran on schedule that day. Mary Phagan got on at Lindsey Street at about 11:50. She is the same girl I identified at the undertaker's. She had been on my car frequently and I knew her well. No one else got on with her at Lindsey Street. Epps did not get on with her. I took up her fare on English Ave., several blocks from where she got on. And no one was sitting with her then. I do not recollect Epps getting on the car at all that morning. Don't know whether anybody else afterwards sat with Mary or not. We got to Broad and Marietta seven and a half minutes after twelve, schedule time. I was relieved at Forsyth and Marietta Streets, where I got off. Mary was still on the car when I got off. It takes two and a half minutes to run from Broad and Marietta to Broad and Hunter. I have timed the car again and again since then. I identified the little girl at the undertaker's Sunday afternoon. Didn't notice the color of her clothes.

CROSS EXAMINATION.

Mary rode with us two or three times a week. So did Epps. I don't know where he got off or where he got on. We are not supposed to come in ahead of time. We never come in two or three minutes ahead of time. We are a little late sometimes. I never noticed anybody sitting with Mary. She was sitting by herself when I got her fare. There wasn't but two or three passengers on the car and I know there wasn't anybody sitting with her. If Epps was on the car I don't recollect it. I don't recall the name of any other

passengers except Mary Phagan. As to what attracted my attention to Mary getting on the front end of the car, as a general rule when she would catch our car Mr. Matthews would say to her "You are late to-day," and sometimes she would come in and remark that she was mad; that she was late to-day and when she came that morning Mr. Matthews said to her, "Are you mad to-day?" and she said, "Yes, I am late." And sort of laughed and came on in the car and sat down. She usually caught our car when she came in the morning, the one due in town at 7:07. I didn't know Mary's name, I just recognized Mary's face as the little girl who traveled with us.

RE-DIRECT EXAMINATION.

I heard of the murder the next day. Newspaper reporters asked us to go down and identify the girl. There was no doubt about her being the little girl who was on our car. Oliver Street is the next street to Lindsey. I did not see Epps get on at Oliver Street. It is against the rule of the company to get to the city ahead of time.

RE-CROSS EXAMINATION.

It is not against the rules to get in behind time. Sometimes we might get there a few minutes ahead of time, but hardly ever. We always look at our watches at the main destination, just at Broad and Marietta. We are supposed to do that.

HERBERT G. SCHIFF, sworn for the Defendant.

I am assistant superintendent of the National Pencil Co.; I have been with the company about five years. Part of my duties was to get up data for the financial sheet. I occupied the same office as Mr. Frank. I took a trip on the road on the first Saturday in January. All of the company's money except the petty cash was kept over at Montag Bros.' office at the general manager's office, Mr. Sig Montag. All mail of the company is received at Montag Bros. The men in Mr. Montag's office made the deposit of money of the company. Mr. Frank and I only handled the petty cash ranging from $25.00 to $50.00. When we wanted money for the pay roll, we would get a check from Mr. Sig Montag who signed for the company. Mr. Frank and I had no authority to sign checks. I would go to the bank and get the money and we would go to work at once filling the pay envelopes. We would always draw the exact amount of the pay roll. Our petty cash amounted to from $25 to $50. We kept that on hand for items like drayage, kerosene, soap, candles. The money for the cash would also come from Mr. Montag's office. The salary of Mr. Frank and myself were paid by check, on the last of the month, or the first of the next month. Mr. Frank's salary was $150 a month and my own $80. Montag Bros. office is about four blocks from the factory. The company's bills were paid from Montag Bros.' office, where all the finances

of the company were taken care of. We simply looked after the manufacturing end. The financial sheet which Mr. Frank and I worked on on Saturdays showed how our week terminates, whether at a profit or loss. We had to show what we manufactured, what we packed, the materials that were made to go on the pencils, covering lead, plugs, tips, boxes. We showed our shipments, what our average order jobs amounted to, what we purchased for and the price. Our factory week began on Friday night and went through Thursday night. In making up the financial sheet we would show it as ending on Thursday of every week. We couldn't make it up until Saturday afternoon because our reports very seldom came in before Friday noon and sometimes Saturday morning and also our pay roll which showed on the financial sheet. These reports and the pay roll were necessary to make up the financial sheet. We paid off at Saturday noon. It has been our fixed custom ever since we have been in existence to make up the financial sheet on Saturday. I help Frank make out the financial sheet by getting up part of the data, getting up a sheet that we term the factory record, the number of pencils packed for the week, getting up the tip records; I get the reports from the different foremen and foreladies; I get the slat records from the slat mills, the number of slats delivered to manufacture pencils with, and give him the totals of the pay roll. With the exception of the last week in July and the first week in August I missed no time from the factory after June 1st, excepting my trip on the road during January. With that exception I have not missed a single Saturday after the first of June, 1912. I usually leave the factory at 12:30 and return at 2 to 2:15. Frank would leave a little after one and return about three. I do not recall a single Saturday that Frank returned earlier than I did. As soon as Frank would get back he would get to work on his part of the data and he would continue to finish the sheet. We both worked together. The street doors were always open. Office boy would be in the outer office. Frequently we were interrupted by salesmen calling on us Saturday afternoon. The stenographers came back very seldom on Saturday afternoon. We were liable to be interrupted at any time on Saturday afternoon by people on business. As to who else stayed at the factory on Saturday afternoon, Harry Denham usually, Walter Pride, Holloway, who would stay until 4:30. Newt Lee was the first negro night watchman we ever had. Frank and I usually left the factory at half past five or a quarter to six on Saturdays, we usually left together. Very often Mrs. Frank would come up to the office on Saturday. I never saw Conley around the office on Saturday afternoon after two o'clock. We never had any women up in the office. I never saw any there. There is not a bed, cot, lounge or sofa anywhere in the building. There is a dirty box with dirty crocus sacks on it in the basement on the Clarke Wooden Ware Company side. It is very filthy and dirty down there. I went on the road on the first Saturday in January, 1913. I got back to the factory that day about 2:15, in the afternoon. There were ten or twelve fellows there. Conley was not there. They were all there and told me good-bye, with the exception of two or three who accompanied me to the train, including Mr.

Frank. There were no women at the factory. I have never seen Mr. Dalton in the factory in my life. Daisy Hopkins worked on the office floor. She left the factory June 6th, 1912, as appears on the time book. Never saw her in the factory after she quit work. On the first Saturday in January, Frank remained in the office with me until 5 o'clock to catch my train. I was at the factory last Thanksgiving day. It was very cold and rainy. It was a holiday at the factory. The office boy and Conley were also there. I ordered Conley to come back that day to clean up the box room with Frank Payne, the office boy. Conley got through about half past ten. I know he did not stay at the factory until noon. Frank and I were all of the time in the office doing clerical work. Frank left that day at 12 o'clock. We left together. I saw Frank catch his car for home that day. Frank was carrying bundles, for the B'nai B'rith, which was going to have an affair that night. Mr. Frank is president of it. It is a charitable organization. It takes care of orphans and things of that sort. I paid off the help on Friday, April 25th, from the pay window outside of the office. I remember paying off Helen Ferguson that day. Nobody came up to ask for Mary Phagan's pay. Before any one could get another's envelope, they have to have a note to that effect. There was no reason for anyone to go to Mr. Frank to get their pay Friday, April 25. I was at the window paying off employees. We had posters put up all over the factory announcing that Saturday would be a legal holiday and that the factory would be closed. Those who would not call for their pay would frequently come in on the next working day, which in this instance would be Monday. No one could really know whether anyone was coming in for their pay on Saturday or not. Helen Ferguson did not ask for Mary Phagan's pay Friday, April 25th. Mr. Frank and I left the factory between six and six thirty that day. I was supposed to get up the pencil contracts for the week on Friday. It was necessary to get this up in order to complete the financial sheets. I did not get them up on Friday, because I had to pay off on Friday, and as the week only closed on Thursday night, we had all we could do to figure out the pay roll and get the money before the bank closed at 2 o'clock on Friday. That threw extra work on Mr. Frank in getting up the financial on Saturday. I intended to come back to the factory on Saturday morning, but overslept myself. Mr. Frank called me by telephone twice on Saturday morning. My maid answered the telephone. That picture (State's Ex. "A") shows Mr. Frank's office, inner office, to be bigger than the outer office. As a matter of fact the outer office is twice as large as the inner office. The picture shows an inaccuracy as to the relative position of the elevator shaft from the outer wall of Mr. Frank's office. It is directly opposite the time clock. The picture shows it below the time clock nearly to where the staircase is. The door entering into the Clarke Wooden Ware place was open two or three days after the murder. The door was previously locked. There is a hole back there through which waste is thrown down. It is an open hole. There is no lid to it. It is big enough for the body of a girl of the size of Mary Phagan to go through. If a body was thrown down it, it would roll down and

stop on the platform. Mr. Frank did not know that I had not completed the data sheet (Defendant's Ex. "3") for him before Saturday morning. It usually took Mr. Frank and me about three hours to finish the financial sheet. This is the financial sheet that Mr. Frank made up on Saturday afternoon, April 26th (Defendant's Ex. "2"). It is in his handwriting. I didn't see it at the factory on Friday. First saw it the following week when I got it back from the general manager. It is accurately prepared from the calculations left by me on the data sheet. I haven't found any mistakes in it. The first items on it are standing items and do not require any calculation, if you know it. Those are the items headed, "direct, indirect, rent, light, heat, water, power, insurance, sales department, repair sundries, Machine Shop." Under the heading "Material Costs," the first figure 2765 1-2 represents the number of gross that we manufactured for that week. That is the data I furnished him through Wednesday night. I left it there on his desk on Friday night. Mr. Frank's calculation corresponds with the data that I left there. He arrived at the same figure, 2765 1-2, that I did. To get that figure he had to enter all his packing reports for Thursday containing two or three pages, each of them containing 12 to 15 or 18 items. He has to put that down under the number of pencils that shows on this sheet. He has to calculate and have a separate report as to each kind of pencil and then add them up. We manufacture over a hundred kinds of pencils. That week we dealt with about thirty-five different kinds. To do this you have to add, multiply, classify and separate each pencil into a different class. The next item appearing on the financial sheet is "slats," 2719 1-2. In calculating that he had to calculate the number of gross of slats used, of the product of the pencils, which should check up with the number of gross manufactured. He would have to go through the packing report for that. The next item is "rubber," 720 gross at 6 1-2 cents, 667 1-2 at 9 cents, 706 1-2 gross at 14 cents. That means the rubber plug that goes into the pencil tips. The cheaper pencil takes a cheap plug and the higher grade pencil takes a higher grade plug. That shows how many we use and the kind of plugs; to arrive at that figure he had to go all through the grade of pencils for the entire week, and separate the different ones. That is quite a calculation. Next item is "tips," the different kind of tips that are used on the pencil to hold the plug. He would have to go through the grade for the entire week, just like he did for the rubber. The next item is "lead," which he had to figure out the same way. Different class pencils take different class lead. The next item is "supplies," that is a fixed thing and involves no calculation. The next thing is "boxes." We have some pencils that are packed in boxes and some that are not packed in boxes, and he had to ascertain what pencils were packed in boxes, and in gross boxes, and in half gross boxes, multiply them, get them all down together under the head of "gross" to know how many boxes we used. Next item is "assortment boxes." He has to sort out his packing reports to know the number had for that week. The next item "wrappers" requires calculation because every dozen pencils takes a wrapper. People sometimes want them

packed in tissue paper, and he has to know which pencils are packed. He has got to go through all the pencils to determine which took wrappers and which did not. Our pencil production averaged 2500 to 3000 gross per week. A gross is 144. The next item is "skeletons." Skeleton is a card board with a little place in it where six pencils go on one side and six on the other and the wrapper goes around it. The assortment boxes don't take skeletons, the cheaper pencils do. He had to know the details of the productions of pencils to determine how many skeletons were used, just like he did the wrappers. The next item that required figures is "lead deliveries." We had two other places where we get materials from, slat mills at Oakland City and lead mills at Bell and Decatur street. Mr. Frank kept the pay roll for Bell Street, and the lead deliveries for Bell Street. He had to get up for the next item the slats that were cheap and good. Then he had to calculate all this stuff on down. Next on this big sheet we have the number of every pencil manufactured. We only use the numbers that are packed that week. When he gets through he adds the total of the productions for that week of that department and he comes over here and puts it down and multiplies it by the price, the selling price, and besides these items we have pencils that are bad. For instance, we have some of these jobs, if they have plugs in them that are bad, he has to figure the number of plugs and the number of tips that were in his job and put in all his jobs and come over there and put down what his jobs amount to. That requires quite a good deal of calculating. The handwriting on the financial of April 26th is in Mr. Frank's usual and average handwriting. I have been over carefully the calculations in it and it represents accurately the operations of the factory for that week. We did not do any of the work on that sheet on Friday. I think it would take about three hours to go through the calculations and complete that sheet. That was our average time. There is no difference in the handwriting of Mr. Frank in the financial sheet of April 26th, from that of the week previous. It is just the same. The financial sheets are all kept in this book here (Defendant's Ex. "9.") The one ending May 30th, 1912, is in Mr. Frank's handwriting. It was made on the Saturday following that date. None of these financial reports could be made in less time than two hours and a half. All these financial sheets beginning with May 30th, 1912, down to date are all in Mr. Frank's handwriting. They were all done on Saturday afternoons. From May 30th, 1912, up to date, Mr. Frank did not miss making a single financial sheet on Saturday afternoon. These are the original financial sheets (Defendant's Ex. "9.") They are kept in our safe at the factory. This little cash book (Defendant's Ex. "10") shows the petty cash checks we receive and what we spend it for, little items like kerosene, things like that. The week of April 26th, we used $56.53 of the $96.48 we had, leaving $40.00 on hand. The next week we had left on hand $34.54. That is what is marked to balance, but that does not always mean that we have that much money on hand. It means that we have accounted for it. We may have lent it out, in advances to men. We put tickets in the cash drawer when we do that and we

count it as actual cash. On that Saturday, we couldn't have over $30 or $35 in the drawer. Yes, I acquainted Joel Hunter, the accountant, with all the data that goes in the financial sheet and explained it to him in detail, and also Mr. Bidwell. I gave them all the data necessary to make up the sheet. The sheet here headed "Comparison 1912-1913" (Defendant's Ex. "11") is made up by Mr. Frank to show the difference between one week of this year and the same week of last year and in making that up he has to take the financial sheet that he made this year and turn to the financial sheet that he made last year for the same week and compare them. This is the comparison sheet he made on Saturday. It is dated April 24th, 1913. (Defendant's Ex. "11.") The requisition and house order book (Defendant's Ex. "12") also show Mr. Frank's handwriting on April 26th. Also the last two lines of these pencil sheets (Defendant's Ex. "7") are in Mr. Frank's handwriting. I made up the pencil sheets through Wednesday, but he had to make it up after Thursday. He had to put in all the items from the packing room for Thursday, enter them under the numbers on these other sheets and then add every item for the whole week. Mr. Frank had to fill in April 24th on all three papers and then get in all those totals in on that. All of the last two lines are in his handwriting. He added up all this report for Thursday. He went through the report to figure them up, that was usually my work. It would take him about fifteen, twenty or twenty-five minutes. The house order book shows what day an order is received, the firm it is received from, where their place of business and what date it is shipped. As to what work is in this house order book (Defendant's Ex. 12) that Mr. Frank did on Saturday, there is work in there in Mr. Frank's handwriting that wasn't in there when I left the night of April 25th. Beginning with item 7187 on page 56, "Received from F. W. Woolworth, store 57, St. Joseph, Mo., came in on the 16th, 17th, to be shipped at once." That is in Mr. Frank's handwriting, he entered that order. He would have to have that order before him before he could enter in that book. The next item he entered was "House order 7188, F. W. Woolworth, Store 68, Terre Haute, Ind." That was to be filled at once. He would send an acknowledgment card for every order we received. If the order wasn't understood, he would write. The next item he entered was "House order 7189, Woolworth Store 53, Logansport, Ind., to be shipped at once, received on 4-26-13." He figured that order out and entered it. The next order is "House order 7190, store 585 DeKalb, Ill., received 4-26-13, ship at once." The next order is "House order 7191, store 25, Wilkesbarre, Pa., received 4-26-13, ship at once." Next order "House order, 7192, store 212, Saratoga Springs, N. Y., received 4-26-13 to be shipped at once." The next order is 7193, send by mail to United Service, Sioux 5 and 10 cent store, Sioux, Mich., received 4-26-13, to be shipped August 1st." Next order is "House order 7194, Dubuque, Iowa, 4-26-13, at once." Next is "House order 7195, Montag Brothers, Atlanta, Ga., received 4-26-13, to be shipped at once." Next is House order 7196, John Leellie, to John Magnus Company, Chicago, Ill., 4-26-13, at once." Next is "House order 7197, R. E. Kendall Company, Cin-

cinnati, Ohio, received 4-26-13, ship at once." All of these eleven orders are in Mr. Frank's handwriting and he entered them that day. That is the regular book that we keep those orders in (Defendant's Exhibit 12). I have looked at the original orders and compared them with Mr. Frank's entry in the book and they are correct. I have here the original orders from which Mr. Frank made his entries, with the exception of one, which I can't find. They were in Mr. Dorsey's possession for some time. These are the eleven original orders (Defendant's Exhibits 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24). After Frank entered the orders in the house order book, he transcribed them to these requisition sheets. In other words, in each order that he receives, he enters the order in the book; then makes out one of these requisition sheets and then makes the acknowledgment of the order to the party ordering the goods. All of these eleven requisition shets (Defendant's Exhibits 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35), are in Mr. Frank's handwriting and are O. K.'d by me when I check it, which means that we ship the goods. All of the goods called for by these orders have been shipped out by me after being O. K.'d character for truth and veracity. It is bad. I would not believe him on oath. The paper that those notes found by the body were written on can be found all over the plant. They get swept to the basement in the trash. I heard the telephone conversation between Mr. Frank and Mr. Ursenbach about the ball game. I heard Mr. Frank say, "Yes, Charles, I will go if I can." Sitting at Mr. Frank's desk in the inner office you can see about half of the dial of clock No. 2. You can not see the steps leading down to the first floor. If the safe door is open in the center office you can't see anything at all. It would have to be a pretty tall man to see over it. It would be impossible for a girl of Monteen Stover's height to see over it. The safe door is always wide open while we are in the factory. I went through the safe Monday, Tuesday and Wednesday. I didn't find any mesh bag or pocketbook. I was with Mr. Frank constantly while he was at the factory on the Tuesday morning after the murder. He did not speak to the negro Conley that day. Monday we tried to open up the factory, but everybody was so excited that we couldn't with the exception of the order of R. E. Kendall and Company, 7197, (Defendant's Exhibit 24), which was cancelled by letter. None of these orders were at the pencil factory when I left there Friday night, and they were there when I got back on Monday. The work of looking over the orders and entering them in the order book and making out the requisition has nothing to do with making out the financial sheet. It is entirely independent of it. The financial sheet shows the factory's operation from Friday morning, through Thursday night. These orders go into the next week's business. I saw Mr. Frank on Sunday after the murder. There was no scratch, mark or bruise on him. Mr. Frank is a man of extreme temperament. If anything went wrong about the factory, he would go all to pieces and get nervous. It was not unusual for Mr. Frank to get nervous. When a young child was run over by a street car, he came back as pale as death, and I had to give him a dose of ammonia. He was no good for the rest of the day. I know Jim Conley's

do any work. The girls were standing around, crying. We had to suspend. As I went out of the shipping room that morning, I saw Conley standing in the back of the room. I said, "What are you doing here?" He says: "I am scared to go out, I would give a million dollars if I was a white man." It is very dark on the ground floor around the elevator. I have never known the doors to Mr. Frank's inner or outer office to be locked. Even if they were you can see right through them, part of the door being glass. Anybody could look through them and see what is going on in the office. The door to the elevator can be easily lifted by anyone and anyone can be pushed down the elevator shaft. The motor to the elevator is on the office floor, and the wheels are on the top floor. When you start up, there is a noise. You can always hear the jerk when the rope is pulled, and when it stops there is a noise and when it hits the basement floor, there is a thud. The motor also makes a distinct humming noise. The motor box is not kept locked. I have gotten after Jim Conley many times about not registering. We have docked him for not doing it. I have noticed blood spots on the floors of the factory. Whenever one gets his finger hurt, he has to come to the offiec to get it tied up. People have gotten hurt in the metal room, and in coming to the office would walk by the ladies' closet, through those doors. The spots that Barrett pointed out in the regular path where a man would come to the office if he were injured. There were four or five strands of hair that Barrett discovered. I saw them. Could not possibly tell what color it was. The metal room floor has not been washed since I have been there.

CROSS EXAMINATION.

I knew on Monday that Mrs. White claimed she saw a negro there. Frank telephoned me three or four times on Monday to get the Pinkerton's. He was at home. I was at the factory. When the detectives got to the factory Frank was at the station house. He was there nearly all morning. He phoned me at first about twelve o'clock, and then again about twelve-thirty. He wanted me to see if we could not in justice to all the employees try to sift this thing down, and he suggested getting the Pinkertons. He phoned again near one o'clock. Mr. Frank spoke about his nervousness. He didn't talk a great deal about it. He may have spoken to me once or twice about it. I think one time he explained to me how terrible the girl looked and the other time that they rushed him to the undertaker's in a dark room and threw on the light. He said he was awfully shaken up. As to what Mr. Frank said when they telephoned him about the murder, he asked what was the matter, had there been a fire at the factory. Another reason he was nervous he said, he hadn't had any breakfast, he wanted a cup of coffee. We had been without a stenographer quite a while. The work had accumulated to some extent. As to what work there was in the factory for Mr. Frank to do Saturday except the financial sheet, he entered the orders, made requisitions. I do not know that Miss Hall entered all those orders. I know she took dictation. That is all I know about it. The first time I saw those orders entered on the order

book was on Monday or Tuesday. It takes about an hour or an hour and a quarter to enter those orders on the book. It is true that I testified before the coroner that it wouldn't take over half an hour to enter the orders. It takes an hour and a half to do all of the work of transcribing them that you pointed out to me. Asknowledgments are usually made by the person who transcribes the orders and enters them on the requisition. If Mr. Frank didn't make acknowledgments, that would not make a difference of over five or ten minutes in time. I said it would take an hour and a half to do all of the work lying on the table, requisition and all, transcribe them and acknowledge them. As to what that work was, beginning with order 7187 on the 26th, there are eleven orders, going down through 7197. None of that was done on Friday, because the orders weren't there when I left Friday night. I left Friday night at half past six. I didn't go to the factory on Saturday morning. I have never timed Mr. Frank entering those orders. I said I guessed it would take him thirty minutes to actually enter them. After entering them he must transcribe and acknowledge them. The initials "H. H." on these orders (Defendant's Exhibits 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24), means Miss Hattie Hall, the stenographer. "H. G. S." on these requisitions (Defendant's xhibits 25 to 35 inclusive), are my initials, mean that I checked the order and O. K.'d it and it's gone. Miss Hattie Hall wrote the letters acknowledging the orders. I know that because the latter has the letters "H. H." dictated by ". We haven't any regular way of acknowledging. Some orders are acknowledged before they are ever touched. There is no certain first step. It is not necessary that they should be entered in the book first. One step doesn't hinge on the other. If Hattie Hall had anything to do with writing these things, it was done Saturday morning. The orders must also be transcribed from the order to the requisition sheet. The average sheet was the only sheet that had not been worked on Friday that I found had been worked on when I got back there. It had not been touched on Friday, and I had not given any data for it when I left. The data I had to get up for it was the flat production, the packing room production, the tips, I get that from this packing room report (Defendant's Exhibit 4-A). The handwriting is that of Miss Eula May Flowers, the forelady. When I received that report, I had to accumulate all the data, penciled it, and transferred it to the pencil sheets here (Defendant's Exhibit 7). These three sheets are the only thing connected with the packing room for the week of April 24. I wrote the figures Wednesday night and Mr. Frank did it Thursday. Mr. Frank had to add two lines to the sheet. He could get those from Miss Flowers' report just as well as I could. The figures on the bottom of the page are his. All the writing on this sheet is mine except the last two lines at the bottom, which are his (Defendant's Exhibit 7). On that sheet, yes, there are just eleven figures, but you got three sheets to get it from, one line on all three sheets and the total, making six lines altogether. It is not easy to say how long that would take. It is merely looking at those things and putting them down, you have got to go over it, and get the different classes of goods that we pack and take

it and put it under the head of specialty, that is the head of the classes of goods manufactured that week. You must have the slat record. I haven't got the slat record here. It certainly is different from this. It comes from the cedar mill. The item on the financial sheet (Defendant's Exhibit 2) that he got from the slat record is the item under "Material Cost"—"Slats 2719½ gross at 22c." That is all he would have to get on the financial sheet with reference to slats. That wouldn't take any more time than taking these daily reports and putting them on here. He also had to get the lead deliveries from the lead plant and the tip deliveries from the tip plant. Our numbers run on the sheet like this, 10X, 20X, etc. Our two 10X pencils, for instance, manufactured for the Cadilac Motor Company, if they want a pencil with their name on it and our's not on it, we call it the 10X special, of 5 10X Cadilac special. We have to go down through each number that has been sold and get the make of each style of pencil and they have to go in the right square, covering the right shape and the right number of gross. If he didn't he wouldn't balance with his packing reports and the whole sheet would be incorrect. These papers here and the tip plant and the slat record and the lead record and the packing are all the papers I know were not worked on Friday night and which I found at the factory when I got there Monday. Frank needs those four reports to make up his financial. Doing that work and entering those eleven orders is all that I know Frank had to do on April 26th. I didn't see them done. I say I found them done the next week. It was certainly done between Friday night and Monday morning. I didn't see the financial sheet on Monday. The slat record comes from slat mills and tip record from the tip plant. I compiled the data at our plant. If Frank had started to work at eight-thirty, I think he could have finished a greater part of this work by ten-thirty, if he had worked continuously. It is true that he could have done all of the work in two hours and a half. I didn't hear him say that he could have done it in an hour and a half. The work that I have just been over and the entries in the book and the letters that he dictated to the stenographer is the sum total of all the work that I have seen done on the books in the office on April 26th. Mr. Frank and I were not paid off on the 25th, or 26th. In addition to the work I have gone over, Mr. Frank had to balance the cash. This is his writing in the cash book. (Defendant's Exhibit 40) and all those figures were made that day. It doesn't mean that 15c worth of kerosene was purchased that day, because the entry is not dated that day, it means that the figures were put on there that day, for the reason that the week is not closed until that is added to the cash. The date this kerosene was purchased, April 21st, is found in the little receipt book (Defendant's Exhibit 10). It was purchased on the 21st, as shown in the receipt book, but was not entered in the cash book until the 26th. We don't put our items in the cash book the minute they are purchased. We put the total of each item under sub-heads. If we pay drayage $2.00 on Tuesday, $2.00 on Thursday and $2.00 on Saturday, there would not be three entries in the cash book, but they would be under one head "Drayage $6.00," and everything

else the same way. When we advance a man money it is put down on a slip and entered in an envelope, called "Loan." We don't take a receipt for it. I can show that Frank gave $2.00 to Arthur White and it was deducted. I made the entry in the time book the next week and deducted it the following Saturday. We don't enter it on the cash book. This average sheet (Defendant's Exhibit 5) is all in Mr. Frank's handwriting. It begins from January 10, 1911. As a rule Mr. Frank put on the financial sheet the average to show the General Manager how the average of our orders have run. I don't see it on the financial for that week. It is no rule. I said he usually does it. It doesn't affect the financial sheet however, if it is not on there. It doesn't keep the financial sheet from being completed. I say he did work on the average sheet on Saturday because those orders came in that day. I know they could not have been entered the Thursday before and they were entered in fact Saturday because I had gone over the orders and find that they average the same thing that he has got on the average sheet. None of these orders came in the factory before Saturday morning, because they were not there Friday night when I left. I am sure of that. I have never known Mr. Frank to leave there on a Saturday with the financial sheet not ready. He would not go to a ball game unless he had his work up. I heard him say on Friday afternoon that he was going to try to go to the ball game. We left there Friday night together. He didn't go back that night. I said at the coroner's inquest that if the data had been gotten up for him it would take him an hour and a half to two hours. I don't remember saying that it would take only two hours and a half for both the data and the financial sheet. I meant two hours and a half without the data. I say it would have taken from two and a half hours to three hours to have gotten it all up. I am not an expert accountant, and I base my opinion on the reason that I have gone back at the same time and have sat down with him while he was working and seen him when he was finished. He couldn't hurry over the work, and get it correct. I think he could get it up quicker than I could. I am positive that I said at the Coroner's inquest that he could get it up a half an hour quicker than I. I may have said so, that was only an estimate. I have never made up a financial sheet. My estimate of the time referred to Frank doing it. I couldn't tell how long it would take to balance that cash. I said at the Coroner's inquest between an hour and an hour and a half. It all depends on whether you balance or not. We keep our little change in nickles, dimes, quarters and halves, and you have to take the money out of the sack, stack it up and count it. As to how I remember where I was last Thanksgiving Day, because I was going to Athens to see the Georgia foot-ball game. I remember it snowed and I didn't go. I told Conley and the office boy to come back and be at the factory. The second reason I remember is because of the B'nai B'rith affair which Mr. Frank went to and I helped him carry his packages to the car. As to my remembering every Saturday that I have been there for six months previous, I have never lost a day from the factory since I have been there with the exception of my vacation. I was with Mr. Frank until half past twelve on

Thanksgiving Day, when I left him at the corner of Mitchell and Alabama, where he caught a Washington Street car. I don't know what he did that afternoon. I do know that I remained at the factory every Saturday afternoon since I have been there because I have not lost a day. I paid off Friday, April 25th. I remember Helen Ferguson coming to the window and I paid her. I can tell you the names of many more that I paid off that afternoon. (Witness gives names of eight or ten more he claims to have paid off.) Mr. Frank and Mr. Holloway were there at the time. It is very dark underneath the chute near the Clarke Woodenware Company place, and we kept shellac in front of the door there. It is the door to the left. We did not have boxes piled around there after this murder occurred. If a body had been shot down there, it would have been 20 or 25 feet from that door. We go down there every day or so to get shellac; you don't have to pass by the opening under this chute. I never mentioned any indication that anybody had walked around the chute. I saw the place in the metal department on the second floor where they said there was blood. It looked like a small spot covered with white. It looked like blood from a finger being cut. It looked like haskoline had been splashed all over the metal department. There was nothing different about that particular spot from any others, except that it was red. It looked like it had been swept over. As to those steps by the chute I don't know that they were nailed up immediately after the murder. Three days after I came up those steps. I don't remember whether it was before or after the insurance people made us clean up. I know I was at the factory on Saturdays and holidays after twelve o'clock. I change the clock at times if I find that it is not right. We don't run it five minutes ahead of time. Every time I look at it it is on time. We do not have to regulate it often. We regulate it by the whistle in back of us every day at twelve o'clock. We don't set it every time we hear the whistle though. We have had unreliable people at the factory. We give them a trial. I knew that Conley was unreliable a good while ago. Found it out the first time I ever spoke to him. When we found that we couldn't trust him we took him off of the elevator. Mr. Darley and I did it. We didn't take it up with Frank. Girls in the factory have told me about his worthlessness. Miss Carson and others have told me he tried to borrow money and slip off. She complained to me several times about it, that he was trifling and didn't clean up her department, that he didn't move the pencils, that he sprinkled on top of the pencils, that he tried to borrow money. The negroes would come to me and told me that he wouldn't pay his debts and slip off. I don't know whether I ever took these complaints to Mr. Frank or not. I was not under Mr. Frank. I had authority to fire him, but I didn't do it, because in a factory like that it is hard to get a negro who knows something about it. He was in the chain-gang two or three times, once he worked on Forsyth Street in front of the building, and then women would come up to me and try to get money to get him out, two or three times. That has happened since he has been working at the factory. I know that he has been in the chain-gang once, when I saw him working in front of the

factory. The times was when women came up there and tried to get money to get him out. I have seen these books scattered all over the factory, whole books and parts of books. I have seen them since this murder. Both before and after. I have seen sheets sometimes. I knew that Jim could write. I have given him and the other negroes tablets like this (State's Exhibit H). They are kept everywhere in the factory. They would go down in the basement and write. I did not talk to Frank on Monday or Tuesday about Jim Conley's peculiar conduct after the murder. I talked to Darley.

RE-DIRECT EXAMINATION.

When I stated that it took two and a half hours to three hours to make up the financial sheet, I meant without any interruptions. We have quite a few interruptions on Saturdays, salesmen drop in, draymen and people come in, for their envelopes after we have paid off. When I said to Mr. Dorsey that he might do the work from 8:30 to 10:30, I had reference purely to the financial sheet. Making the entries in the house order book, requisitions and dictating the correspondence, I did not include. The correspondence and the entries in the requisition book is usually done in the morning. We usually go to Montag Brothers about 8:30, get the mail, come right back, acknowledge the orders and answer the correspondence. I have never known Mr. Frank to take up the financial sheet before the afternoon. After he finished his financial, Mr. Frank would usually make two copies of the result of it, and send one of them to his uncle, who is a stockholder and the other to Mr. Pappenheimer, who is the president. My estimate of the time was two and a half hours for the financial sheet, and one and a half hours for the other work. Mr. Dorsey's picture (State's Exhibit A) shows nothing in the Clarke Woodenware Company except the front of it. It has left out every scuttle hole, and toilet and everything there. It fails to show the door that enters into the partition to the basement. Hasn't got either one of these two front doors. Mr. Frank's wife frequently did some shorthand work for him on Saturday afternoons. I have seen her there often when we were behind in our work. The haskoline did not hide the red spots at all. You couldn't tell whether it was on top or on bottom of the red. It is nothing unusual for the white stuff to be spilled all over the metal room. I did not know that Conley was denying that he could write in the station house, for quite a while. The Pinkerton men came over to the factory to find out if he could. I looked all over and found a card where he had signed a signature for a jeweler for a watch. The detectives found the information by coming to the factory. The negroes always ate in the basement. Conley was familiar with the basement. Mr. Dorsey subpoenaed me to his office, he subpoenaed some of the others. I think he phoned to me. Empty sacks are usually moved a few hours after they are taken off the cotton.

RE-CROSS EXAMINATION.

I had no objection to coming to your (Mr. Dorsey's) office. I offered to assist you in any way I could. No, it was not Mr. Frank's custom to make an engagement Friday for Saturday evening and then go off and leave the financial sheet untouched. The pencil factory is three or four blocks from Montag's. Some of them are short blocks. Guess it takes three to five minutes to go over there. I have never timed myself. The first time on Monday I observed the peculiar behavior of Conley was between half past seven or eight o'clock, he was sitting in dressing room on a box. It was after that I went with Detective Starnes to try to locate Gantt and arrest him. Frank never went to baseball games or matinees on Saturday. The only pictures that are hanging on the walls of Mr. Frank's office is a calendar that Truitt and Sons give away. No, I don't know whether the detectives found out elsewhere that Conley could write. I gave them the information when they came to the factory. It was on Monday morning that I saw the haskoline and the red spots. If the blinds had been closed it would have been some darker, not a big difference.

RE-DIRECT EXAMINATION.

I have never seen Mr. Frank talk to Mary Phagan.

JOEL C. HUNTER, Sworn for the Defendant.

I am a public accountant, engaged in the profession ten or fifteen years. I have examined the financial sheet said to be made by Leo M. Frank. I examined a copy and then checked it against the original. In order to find out how long it would take a person to make out these reports, I went through the calculations. I did not make out the sheets. I verified the extensions and calculations on the financial sheet (Defendant's Exhibit 2). I found them correct within a decimal. There is one item a decimal is incorrect. That was immaterial, merely an error in the calculation. In order to find out how long it would take that report to be made up, I made an examination, line by line, item for item. I figured an approximate time it would take to make the various entries if they had all of the data immediately available, and how long if it was not immediately available. I put these down in two separate columns and then struck an average. In my opinion the quickest possible time to make out this report, balance the cash, make out the comparative statements and the copies of which they furnished me, I figured 150 minutes. I don't think that could have been done in that time except by someone having experience in it and knowing how to set up these facts and figures. This would not allow for checking the figures. In my opinion, it would take from three to three and a half hours to make out this report, balance the cash, make out the two copies and the comparison of 1912 and 1913. (Witness then details time it would take in his opinion for each particular item that has been calculated

and entered and how he figured it.) In my opinion it would take a pretty swift man three and a half hours.

CROSS EXAMINATION.

A man's familiarity with a special class of work will aid materially in making it up. If he had had to get up the information which was furnished me it would take him a good deal longer than it did me, for the information was already furnished me. I have allowed for his experience and familiarity with the business, in the way of saving time, in making my estimate. I have tried to make my figures sufficiently conservative to make allowance for a man in charge of the work. I have tried to show it done in the quickest possible time. I think it will be wonderful to make it in less than that. I think a man who could make it out and verify it as he went along, it would take the whole afternoon.

C. E. POLLARD, Sworn for the Defendant.

I am an expert accountant. I was called into this matter for the purpose of seeing the length of time it would take to gather these figures and get the result on the financial sheet and other papers that were furnished me. I studied each sheet and when I was sure of what the result would be I would lay that sheet down and make a copy of it. I would take time myself for each operation. There was a discrepancy of one and one-half gross on the factory records in the figures, out of 2765½ gross, (Def's. ex. 2). It was an immaterial error. The minimum time that I could do that work in I found to be three hours and 11 minutes, that was as quick as I could do it. If I had been interrupted in my work of course it would have taken me longer. I have been an expert accountant for 15 or 16 years. The mistake that I found occurred on the Saturday of the week before. It was not Frank's mistake, but somebody else compiled the figures for that week. There is another trifling mistake under the head of "value of products, pencils packed" that did not figure the same as mine. Those are the only two mistakes I found on the whole financial sheet,—a mistake of 50c. and a gross and a half of pencils.

CROSS EXAMINATION.

In making my experiment of how long it would take, I was furnished with all my data. I didn't have to get up any of the data. I am considered rapid in my work. The mistake of one and a half gross occurred on April 18th and 19th. I don't know whose mistake it was. Anybody can work on his books with a great deal more ease than an outsider can. The mistake I mentioned did not make the other calculations wrong, the other calculations were all right. The mistake grew out of just one multiplication. In multiplying 791 gross at 50.1 cents, Frank made the total $396.75, instead of $396.29.

RE-DIRECT EXAMINATION.

In making out this sheet Mr. Frank had to make about 40 multiplications, 160 additions. The mistake is not a serious one.

HERBERT G. SCHIFF, Recalled for cross examination.

The books show that $4 was loaned to Arthur White. I made the entry in the book. The $2.00 was for what Mr. Frank loaned him that day and $2.00 loaned him the middle of next week. As to where the entry is that Mr. Frank lent Arthur White $2.00 these slips are not kept after we take it off. After the payroll is made we destroy those. The books show that this $2 was added to the other $2. There was approximately $1100.00 paid off on Friday on the pay roll. There was about 5 or 6 envelopes, left over not called for. The numbers go on different places on the envelopes. The clocks we have now are the same we had when Gantt was there. Whenever there was any trouble we phoned for a man to look after the clock.

RE-DIRECT EXAMINATION.

Whenever accidents would happen in the factory we would have the person come to the office, to the outer office, where we would bandage their hands with the few medical supplies we keep there. Then we make a report to the insurance company as to the cause of the accident and any witnesses. We always found the clocks kept good time.

MISS HATTIE HALL, Sworn for the Defendant.

I am a stenographer for the National Pencil Company. I do most of the work in the office of Montag Bros. Whenever it is necessary I go down to the National Pencil factory and do work there. I saw Mr. Frank about ten o'clock of the morning of April 26th, at Montag Bros., when he came over there that morning. He came in Mr. Sig Montag's office, where I was taking dictation and I told him that I didn't know whether I would be able to go over there that morning or not, as Mr. Montag was giving me letters and Mr. Frank said: "Well, come if you possibly can." He had previously asked me over the telephone to come over to the factory.

That was about half an hour before he came over to Montag Bros. I had called him up to get a duplicate bill of lading and in the course of the conversation, I asked him if he would need me over there that morning, on account of his having an inexperienced stenographer over there, I had been going over there all during the month of April on that account. He said "Please come over, I have some work for you to do." It was 20 or 30 minutes after that that he came over to Montag's. When he came in I told him that I was afraid I couldn't go over on account of the work I had to do at Montags, but Mr. Montag finished his dictation in a few minutes, and I then told Mr.

Frank that I would have time to come over there and that I would be over there later. I started over to the factory between 10:30 and 11. I went alone. It takes about five minutes to get over there and I reached there before eleven o'clock. I don't know whether Mr. Frank was there when I got there. I waited in the outer office a few minutes before I started to work. I went in the inner office to get the orders to acknowledge for Mr. Frank. I acknowledged them for Mr. Frank. I acknowledged them in the outer office. I do the typewriting in the outer office. These are the 11 orders (Defendant's Exhibit 11 to 24, inclusive), that Mr. Frank handed me and I acknowledged. You notice my initials on them "H. H." I put on there "Acknowledged, April 26, by "H. H." Mr. Frank got the orders when he went over to Montag Bros. and brought them back with him. The acknowledgments are the first step, in that case. Several people came in while we were working, two men, one whose son worked there came in and spoke to Mr. Frank about the boy's being in some trouble in the police court. They went into the inner office to talk to him and he came out to the outer office with them. Miss Corinthia Hall and Mrs. White also came in there in Mr. Frank's office and I talked with him. During this time Mr. Frank was not doing any work on the financial sheet. I find in this book (Defendant's exhibit 12) all of the eleven orders which I acknowledged that morning, one order seems to be missing, I just find a requisition sheet for that. I did not enter those orders on the book. It looks like Mr. Frank's handwriting. I did not write any of these requisition sheets. The entering of the requisition was done after I acknowledged the orders, because when they enter them the house order number is put on them when they are put in the book and there was no house orders on them when I acknowledged them. Therefore, it had to be done afterwards. The requisition sheets are not made out until they are entered on the house order book and then acknowledged and then the requisition sheets are made. These eight letters (Defendant's Exhibit 8) were dictated to me Saturday morning by Mr. Frank and I typewrote them there in the outer office. After finishing them I took them in the inner office to him. I did not file these carbon copies, but left them with Mr. Frank. Throughout the time that I was there that morning with Mr. Frank he did no work on the financial sheet. As I was ready to leave the noon whistle was blowing. At that time I was in the outer office. I went downstairs, and remembered that I had left my umbrella, went back, got my umbrella and started out. When I pushed the clock it was 2 minutes past 12. I did not see any little girl come along about that time.

CROSS EXAMINATION.

The stenographer the pencil company had was inexperienced and did only about one-third of the work and that's the reason I had to do the other. I was getting $12.50 a week on April 26. I am now getting $15. When I was first employed they said they would give me a raise on August 1st. I insisted that I be raised on July 1st, but they wouldn't give it until August 1st. It

was I that called Mr. Frank over the telephone. I did not insist on going over there. He insisted on my coming. The acknowledgments consisted of stamping the orders with a number, putting the dates down there and acknowledging them by post cards sent to the people. Mr. Frank did not leave Montag's with me. He left before I did. He didn't know how long it was going to take me to write those letters. Mr. Montag hadn't finished dictating to me when I talked to him, so he did not wait. While I was there in the office, two men and three women came in. The ladies came after the office boy had left and he said he left about 11:30. The men were in the inner office with him about five or ten minutes. I was in the outer office. I started to work typewriting about two minutes after he finished dictating the letters. I don't know how long it took me to write them, I am not a very rapid typist. During the time I was writing, Mr. Frank was in the inside office, except when he came out to talk to Mrs. White and came to the door with those men. After typing them, I took them into him to sign. He folded the letters and put them in the envelopes himself. He did not ask me to stay until he looked over the letters. As to what else there was to be done that day, from the looks of the papers on his desk he had a good many to dispose of. He went through them as he was dictating to me, and there were a good many that he had to get rid of. I was over at the factory the previous Saturday morning. He was not working on the financial sheet. I got up for him the number of gross deliveries and the price and made an average charge of how much each gross would cost. That was a part of the data necessary for the financial sheet. When I testified before the Coroner, I thought that was the financial sheet itself, because I had never seen a financial sheet before. I know now that it was the average sheet. I transferred some of those things to the average sheet. I never did see the financial sheet. Mr. Montag gets it. I did not help Mr. Frank on the financial sheet the previous Saturday. It was the average sheet I helped him on. I discovered my error as to this being the average sheet and not the financial sheet soon after the coroner's inquest. I know that Mr. Frank was not working on the financial sheet on the Saturday morning previous to the 26th. He was busy with something else altogether. He simply gave me that data to work on. I did not identify the financial sheet at the Coroner's inquest, I didn't even know it. I was not in Mr. Frank's inner office on April 26, excepting when I got the orders from him. When I told the Coroner's jury, if I did tell them that, I didn't remember being in his inner office at all, I have never been in a court room before. I was so rattled that I wasn't exactly myself. Mr. Frank told me that morning he wished Mr. Schiff would come over and finish the data, that he couldn't fix the financial sheet until Mr. Schiff got up the data, and he had Alonzo Mann telephone him to come over there to do it, but Mr. Schiff didn't come while I was there. I said at the coroner's inquest that I didn't see Mr. Frank working on any of these books that day, that I was in the outer office and he was in the inner office. There wasn't any such looking sheet as the financial on his

desk. When I was in there he was at work on a pile of letters and things like that.

RE-DIRECT EXAMINATION.

When I was first employed at the factory Mr. Nix said to me, "I will give $12.50 a week, when the busy season opens up, about the first of August, I will raise it to $15. About the middle of June, I asked him to raise it on the first of July, but he said, "We will wait until August 1st." At the time I testified at the coroner's inquest, I had never seen any of the financial sheets. I did not write a figure on that financial sheet. At the inquest I thought the average sheet was the financial sheet. I told Mr. Frank that I couldn't stay longer than 12 o'clock, and he asked me to stay all the afternoon and help him, that he was busy. I also heard him ask Harry Gottheimer to come over in the afternoon.

MISS CORINTHIA HALL, Sworn for the Defendant.

I work in the finishing up department of the pencil factory. I am a forelady. I was at the factory on April 26, I got there about 25 minutes to twelve. I had to come to town on the East Lake car and got to town about 11:30 and it took me about five minutes to reach the factory. Mrs. Emma Clarke Freeman was with me. She had spent the night with me. We went there after her coat and to telephone, to call up Mrs. Freeman's husband. We went up to the fourth floor to get the coat and then came down and went in Mr. Frank's office. It was about 15 minutes to 12 when we left the factory. Mr. Frank was writing when we came in his office. His stenographer was in the outer office. Mrs. Freeman said she would like to use the telephone. She used the telephone and then we went out. During the ten minutes we were there he was talking to two men between the outer office and the clock. He was dismissing those two men when we came. Mrs. White and the stenographer were in the office then also. As we were going up the steps, Mr. Frank called to Mrs. Freeman to tell Arthur White to come down that his wife wanted to see him. On the fourth floor we saw May Barrett, Arthur White and Harry Denham. When we left the factory, the following people were still there: Arthur White, Mrs. White, May Barrett, her daughter, Harry Denham, the stenographer and Mr. Frank.

CROSS EXAMINATION.

We met Mr. Holloway between Broad and Forsyth Streets as he came out of the factory and as we went in. We met Lemmie Quinn afterwards at the Greek Cafe. Don't know what time it was when we came out, we went to corner of Alabama and Forsyth to use a telephone. It took us about five minutes to go there and come back to Greek Cafe. We got a cup of coffee and sandwich and were getting the change when Quinn came in.

MRS. EMMA CLARKE FREEMAN, Sworn for the Defendant.

I married on April 25th. I worked at the pencil factory before that, at the time I was married. I was paid off on April 25 by Mr. Schiff. On the 26th I reached the factory with Miss Hall about 25 minutes to 12. I saw Mr. Frank at his office. He was talking to two men when we went in. Mrs. White and Mr. Frank's stenographer were also in the office. Mr. Frank gave us permission to go up on the fourth floor to get my coat. While we were going up the steps Mr. Frank called to me to tell Mr. White that Mrs. White wanted him. We went on up, I got my coat and came down, and asked permission of Mr. Frank to use the telephone in his office. I used the telephone. I spoke to Mrs. White a few minutes and then we left, which was about a quarter to twelve. I remember looking at the clock. When we left, there was in the building, May Barrett, the stenographer, May Barrett's daughter, Arthur White, his wife, Harry Denham and Mr. Frank. We met Lemmie Quinn afterwards in a cafe. He said he had just been up to see Mr. Frank. (Cross examination waived.)

MISS EULA MAY FLOWERS, Sworn for the Defendant.

I did not work at the factory on Saturday, April 26th. I worked there Friday, the 25th, in the packing department. Mr. Schiff got from me the data for the financial sheet on Friday night at ten minutes to six. It was the production for the entire week from my department. It covers all the different classes of work where the goods were finished.

CROSS EXAMINATION.

I always turn those reports in Friday night or early Saturday morning. They don't touch Friday's work.

MISS MAGNOLIA KENNEDY, Sworn for the Defendant.

I have been working for the pencil factory for about four years, in the metal department. I drew my pay on Friday, April 25, from Mr. Schiff at the pay window. Helen Ferguson was there when I went up there. I was behind her and had my hand on her shoulder. Mr. Frank was not there, Mr. Schiff gave Helen Ferguson her pay envelope. Helen Ferguson did not ask Mr. Schiff for Mary Phagan's money. I came out right behind Helen Ferguson. We waited for Grace Hicks and then went down stairs. Helen didn't say anything about Mr. Frank at all. We went downstairs about five minutes to six. We saw Helen Ferguson start up Forsyth Street.

CROSS EXAMINATION.

On Monday, April 28, Mr. Barrett called my attention to the hair which he found on the machine. It looked like Mary's hair. My machine was right

next to Mary's. There is a good deal of water over there by Mr. Quinn's room. Mary's hair was a light brown, kind of sandy color. You could plainly see the dark spots and white spot over it ten or twelve feet away. Helen and Mary were the best of friends and were neighbors. Helen made mention that Mary was not there when we were paid off. I have never noticed any spots around the metal room. That's the first time I had ever seen anything like that.

RE-DIRECT EXAMINATION.

I have never looked for spots before. It's a dirty floor, full of oil dirt. I don't know whose hair that was. Helen did not ask Mr. Schiff for Mary's money. She did not have any business going to Mr. Frank when Mr. Schiff was there paying off. She did not go in and ask Mr. Frank for Mary's money. I left with her. I went one way and she went another.

RE-CROSS EXAMINATION.

Mr. Frank paid off sometimes. If there is any trouble about the amount of our money, we would go to anybody that was in the office. Mr. Frank was not paying off that day.

WADE CAMPBELL, Sworn for the Defendant.

I have been working for the pencil factory for about a year and a half. I had a conversation with my sister, Mrs. Arthur White, on Monday, April 28th. She told me that she had seen a negro sitting at the elevator shaft when she went in the factory at twelve o'clock on Saturday and that she came out at 12:30, she heard low voices, but couldn't see anybody. On April 26, I got to the factory about 9:30. Mr. Frank was in his outer office. He was laughing and joking with people there, and joked with me. He thought I wanted to borrow some money. I stayed about five or ten minutes and left the factory. That was about 9:40. I have never seen Mr. Frank talk to Mary Phagan. On Tuesday after the murder I went up on the fourth floor with Mr. Frank. I did not see the negro Conley talk to him at all that time.

CROSS EXAMINATION.

My sister said she saw the negro when she went in the factory. When she heard the voices coming out, she was coming down the steps from the second floor. I saw the spots where they claim was blood, close to the girls' dressing room on second floor. I couldn't say whether it was blood or not. I deny that I ever said that my sister said she saw the negro on the box when she came out of the factory. He was sitting on a box between the elevator shaft and the staircase. That looks like my signature. I don't know whether it is or not. Yes, I corrected certain statements in that paper.

RE-DIRECT EXAMINATION.

I went to Mr. Dorsey's office because he subpoenaed me. I thought I had to obey it. Mr. Starnes and Mr. Campbell and the stenographer were there. All of them asked me questions. I signed a statement about twenty-one pages long. I have seen Jim Conley reading newspapers up on the fourth floor, twice since the murder. It is not unusual to see spots all over the metal room floor.

RE-CROSS EXAMINATION.

Conley was sitting by the elevator when he was reading those papers, during working hours. The other time he was reading down at the rear end of the building. It was an extra, but I don't know what paper it was. I knew that he could write because I had seen him do it several times, with pen and ink. I don't know whether he was making up his report of boxes, but I have seen him writing. Yes, I have seen spots along the route from the ladies closet to the elevator ever since I have been there. They have red varnish and red paint and such things like that that look like blood. I am sure there are spots all around in the metal room, but I won't say they look like the spots near the ladies' dressing room.

LEMMIE QUINN, Sworn for the Defendant.

I am foreman of the metal department. Barrett pointed out to me where he claimed to have found blood spots on the metal room floor. He asked me whether I thought that he (Barrett) would get the reward if Frank were convicted. He told me that several people told him that he had a good chance to get the reward. He said a fellow told him that he would get $2,700 one time and $4,500 the other time. He mentioned that reward to me on several occasions. The floor of the metal room is very dirty. You could not tell at the alleged blood spots whether they were varnish or oil. We have blood spots quite frequently when people get their hands cut. I remember a man by the name of Gilbert was hurt in that room. He was carried towards the main office by the ladies' dressing room and sent to the hospital. He bled freely. That was about a year ago. About eight months ago a boy cut his hand pretty badly and was carried by the ladies' dressing room to the main office, right over the place where Barrett found the blood spots. His hand was bleeding. About a hundred women work in the factory. Haskoline is scattered all over the floor of the metal room. That floor has never been scrubbed since I have been to the factory. I could not tell what color hair it was Barrett found. There were only a half dozen strands in it. Chief Lanford took it. There is a place in the room where the girls dress their hair by a little gas jet which they use for heating a curling iron. It was about ten feet from the lathe where Barrett claims to have found the hair. If a breeze was blowing from this window from the west it would blow to where the girls were fixing their hair. The last time I saw Mary Phagan before the murder was Monday.

She left about two o'clock. She left about two o'clock because we were out of material and she was laid off for the rest of the week. I have never seen Mr. Frank speak to her. I went to the factory on April 26th, to see Mr. Schiff. He was not there. I often go to the ~~factory on~~ Saturdays and holidays. The street doors were open when I got there. I did not see Mary Phagan, nor Jim Conley, nor Monteen Stover. The doors to Mr. Frank's inner and outer office were open. The time I reached Mr. Frank's office was about 12:20. I saw Mr. Frank on Sunday at Bloomfield's undertaking establishment in the afternoon. He had on a black suit. On Saturday he had on a brown suit. There was no blood spots under the machine where Barrett claims to have found the hair. On Monday Mr. Frank had on a brown suit. There was no blood at the spot where Conley claims the body of the girl was found. It was perfectly dry there, there was no water on the floor.

CROSS EXAMINATION.

I noticed the blood spots at the ladies dressing room on Monday. I did not tell Mr. Payne and Mr. Starnes that I was not in the factory on April 26th. I told nobody that. Mr. Frank is not the first person to whom I told it. He did not tell me to keep quiet about it until he saw his lawyer. I did not tell the officers about it. Mrs. Frank said he remembered my being at the factory, but did not remember the time. At the coroner's inquest I said it was pretty close to 12 o'clock when I got to Wolfsheimer's. I don't think it could have been as early as quarter after twelve when I got to the factory. As to why I did not tell the officers, they could have gotten it if they had asked me. I never mentioned it to Barrett either. I told Chief Lanford on the following Monday that I was at the factory. I told it to Frank on Tuesday. He said he would mention it to his lawyers. I told Frank I didn't like to be brought into it but if it would help him in any way I would do it. As to whether I would have mentioned it or not, was up to Mr. Frank. He afterwards told me that his lawyers advised him to mention it at the coroner's inquest. That was Tuesday afternoon. I told you in the statement I gave you that I could not swear positively as to the time I was at the factory. I said I got to the pool room between 12:20 and 12:30. I had been up in the factory before I met Mrs. Freeman and Miss Hall at the Busy Bee. I was in the office and saw Mr. Frank between 12:20 and 12:25. At the time I made the statement to you that I was there between 12:00 and 12:25 I had reckoned the time down as I have now. The back door at the stairway going up from the office floor to the top floor is fastened with a bar. It is not closed except on pay day. It is true that a man at the office door could easily lift the bar and walk up, but a man could not come down to the office floor from above at all. Anybody could fix that bar in its place in half a minute. I told you in the detective's office that I reckoned the time of my being in the factory from the time I left home and the destination I went to, and I said I could not remember the stop at Wolfsheimer's which took ten or fifteen minutes, and that is why I

reckoned it so positively. I left home I know at about a quarter to twelve. I looked at my watch. It takes twelve or fifteen minutes to walk to the factory. I got to Wolfsheimer's pretty close to 12 o'clock. I was there ten or fifteen minutes.

RE-DIRECT EXAMINATION.

At the time the detectives and Mr. Dorsey talked to me about the murder, I overlooked the fact that I had been to Wolfsheimer's. My wife called my attention to it when I got home. I mentioned this matter to my father and my wife before I ever mentioned it to Mr. Frank. Mr. Frank did not tell me not to mention it to anybody. If a detective had asked me I would have told him what I knew about it. At the Coroner's inquest I said it could have been as early as twenty minutes after 12 that I got to the factory, because I had reckoned my time down from leaving home and the number of steps, and I said it must have been between 12:20 and 12:25.

HARRY DENHAM, sworn for the Defendant.

I work on the fourth floor of the pencil factory. I was paid off Friday, April 25. I came back Saturday to do some work. Mr. Darley asked me to come back. I had to work on the machinery when it was not running. That was the only time I could do it. I got there about 7:30. Mr. Holloway was there when I got there. Between 12 and 1 o'clock I was working on the varnish machine. We were hammering. We worked until ten minutes after 3. We began to take an old partition out and put in a new one about 12 o'clock. It took a good deal of hammering; we were making a racket up there. May Barrett was the first person to come upstairs that day. She came about quarter past eleven. Stayed about three-quarters of an hour. It was after twelve when she left. Mrs. Freeman and Miss Hall were the next to come upstairs and stayed about fifteen minutes. They got a coat and went down. Mrs. White came upstairs about 12:30 to see her husband. She had a good long talk with him. She was still upstairs when Mr. Frank came up. He told Mr. and Mrs. White that he was going to dinner and would like to close the doors. He stayed up there just long enough to tell us that and then went downstairs. Mrs. White went right down behind Mr. Frank. I never heard the elevator run that day. I was up on the fourth floor all day. I can see the wheels turning on that floor. There were no noises in the factory that day, excepting street noises. When the elevator stops it makes no noise; it shakes the floor a little when it stops. You can't hear anything except shaking the building when it starts. You can hear the elevator better when the machinery is not running. If the wheels had been running that day I could have seen them from where I was. When I left at ten minutes after three, I saw Mr. Frank. Mr. White and I came down together. Before we went out, Mr. Frank came upstairs about three o'clock and asked was we getting out, and we told him we were getting ready to go right now. We

were washing right then. When we came out we saw Mr. Frank at his desk in his office writing. Mr. White borrowed $2 from him. He did not look nervous or unusual. You can look down from the landing on the third floor and see whether anything is being put in or taken out of the elevator on the office floor. White and I on the fourth floor could have gone anywhere in the building that day. It was open to us.

CROSS EXAMINATION.

We were working about 40 feet from the elevator. There were crocus sacks upon the floor where we were working. The first time Mr. Frank came upstairs was about ten minutes to one. At the coroner's inquest I said I wasn't certain of the time. The second time he came up was about three o'clock. We had finished our work and were washing up and getting ready to go. I am not certain of the time he came up the first time. I think it was 10 minutes to one. That's about the time Mrs. White left. He didn't say he was going right then. He said he wanted to go out. The wind was blowing strong that day and slapping the blinds backward and forward. There were no other noises inside the building. We stayed up on the fourth floor all day except one time when we went down about a quarter past eleven to have Mr. Holloway put some pieces on the band saw. It was a mistake when I told at the coroner's inquest that I had not left the fourth floor at all that day. A person could have gone in the building and gone out and we not have known it. We were knocking and hammering all the time about midway of the building. It might have been a good deal of noise on the office floor and we would not have known it. I said at the coroner's inquest that Mr. Frank had a habit of rubbing his hands together. We left Mr. Frank in the factory when we left there. I saw some spots Monday they said was blood.

MINOLA McKNIGHT (c), sworn for the Defendant.

I work for Mrs. Selig. I cook for her. Mr. and Mrs. Frank live with Mr. and Mrs. Selig. His wife is Mrs. Selig's daughter. I cooked breakfast for the family on April 26th. Mr. Frank finished breakfast a little after seven o'clock. Mr. Frank came to dinner about 20 minutes after one that day. That was not the dinner hour, but Mrs. Frank and Mrs. Selig were going off on the two o'clock car. They were already eating when Mr. Frank came in. My husband, Albert McKnight, wasn't in the kitchen that day between one and two o'clock at all. Standing in the kitchen door you can not see the mirror in the dining room. If you move up to the north end of the kitchen where you can see the mirror, you can't see the dining room table. My husband wasn't there all that day. Mr. Frank left that day sometime after two o'clock. I next saw him at half past six at supper. I left about eight o'clock. Mr. Frank was still at home when I left. He took supper with the rest of the family. After this happened the detectives came out and arrested me and took me to Mr. Dorsey's office, where Mr. Dorsey, my

husband and another man were there. I was working at the Selig's when they come and got me. They tried to get me to say that Mr. Frank would not allow his wife to sleep that night and that he told her to get up and get his gun and let him kill himself, and that he made her get out of bed. They had my husband there to bulldoze me, claiming that I had told him that. I had never told him anything of the kind. I told them right there in Mr. Dorsey's office that it was a lie. Then they carried me down to the station house in the patrol wagon. They came to me for another statement about half past eleven or twelve o'clock that night and made me sign something before they turned me loose, but it wasn't true. I signed it to get out of jail, because they said they would not let me out. It was all written out for me before they made me sign it.

CROSS EXAMINATION.

I signed that statement (State's Exhibit "J"), but I didn't tell you some of the things you got in there. I didn't say he left home about three o'clock. I said somewhere about two. I did not say he was not there at one o'clock. Mr. Graves and Mr. Pickett, of Beck & Gregg Hardware Co., came down to see me. A detective took me to your (Mr. Dorsey's) office. My husband was there and told me that I had told him certain things. Yes, I denied it. Yes, I wept and cried and stuck to it. When they first brought me out of jail, they said they did not want anything else but the truth, then they said I had to tell a lot of lies and I told them I would not do it. That man sitting right there (pointing to Mr. Campbell) and a whole lot of men wanted me to tell lies. They wanted me to witness to what my husband was saying. My husband tried to get me to tell lies. They made me sign that statement, but it was a lie. If Mr. Frank didn't eat any dinner that day I ain't sitting in this chair. Mrs. Selig never gave me no money. The statement that I signed is not the truth. They told me if I didn't sign it they were going to keep me locked up. That man there (indicating) and that man made me sign it. Mr. Graves and Mr. Pickett made me sign it. They did not give me any more money after this thing happened. One week I was paid two weeks' wages.

RE-DIRECT EXAMINATION.

None of the things in that statement is true. It's all a lie. My wages never have been raised since this thing happened. They did not tell me to keep quiet. They always told me to tell the truth and it couldn't hurt.

EMIL SELIG, sworn for the Defendant.

I am Mr. Frank's father-in-law. My wife and I live with Mr. Frank and his wife. The kitchen in our house is next to the dining room. There is a small passage way between them. The sideboard in the dining room is in the same position now, as it has always been. Mr. Frank took breakfast

before I did on April 26th and left the house before I breakfasted. I got back home to dinner about 1:15. My wife and Mrs. Frank were eating then. They told me in the morning to come home a little sooner, that they wanted to go to Grand Opera that afternoon and have dinner a little earlier than usual, and I came home a little earlier. Mr. Frank came in after I did, about 1:20. There was nothing unusual about him. No scratches or bruises about him. He sat down to his meal. The ladies left us while he was still eating. I don't know what Mr. Frank did after dinner, I went out to the chicken yard. Mr. Frank was still in the hall when I got back. I laid down and went to sleep. I did not see him when he left. I sa v him about 6:30 that evening. Mrs. Frank and Mrs. Selig had not yet gotten back. They came in a short while. We ate supper about seven o'clock. I noticed nothing unusual about him at supper. We finished supper about 7:25. Mr. Frank sat in the hall and read. A party of our friends came to the house and played cards after supper. Frank and his wife did not play. They do not play poker. They play bridge. He was reading in the hall while we were playing. He came in one time while we were playing and said he read a story about a baseball umpire's decision and he was laughing. Frank answered the doorbell several times that evening when the guests came. He and his wife went to bed before the company left, about 10 or 10:30. He came to the door and told us good-night and went upstairs. His wife went up shortly afterwards. Our party broke up about half past 11. I did not hear the telephoning early Sunday morning. I saw no scratches on Frank Sunday morning.

CROSS EXAMINATION.

I have never seen the servants move that sideboard. I say it was about 1:20 when Mr. Frank came home to lunch, because I left town about 1:10. The car reaches our corner between 1:10 and 1:20. I got home a little after one. About 1:10. Mr. Frank may have laid down and taken a nap after dinner. I don't know. I laid down and took a nap. Mr. Frank was gone when I woke up. I have heard Mr. Frank frequently call up the factory from his home at night. I talked very little with Mr. Frank on Sunday when he got back home. I don't recall any conversation I had with him relative to the murder. I did not pay any attention to anything he said about the murder at dinner time. I have no recollection of telling coroner's jury that he did not leave before I got up. I don't know what I told coroner about talking to Frank that day. I knew that my son-in-law was superintendent of factory and that a girl was found killed there and I did not refer to the subject that day. I don't remember saying that Frank didn't say anything about it when he came home. I ate dinner with him. I remember stating at coroner's jury that Frank came home and didn't say a word about it all day to me.

MRS. EMIL SELIG, sworn for the Defendant.

I am Mrs. Frank's mother. Mr. and Mrs. Frank have been living with us two years. The sideboard is in the same position it always has been except when we sweep under it. We had lunch on April 26th after 1 o'clock, about ten minutes past one. Mr. Frank came about twenty minutes past one while we were eating. He sat down with us and ate. Mrs. Frank and I left before he did. We left about half past one. He was still eating at the table. After the opera, while we were on the street car, passing Jacob's drug store we saw Mr. Frank at about 6:10. I happened to look up at the clock and saw it was 6:10. We stopped at my sister's, Mrs. Loeb before going home. Mr. Frank was there when we got there. We saw nothing unusual about him. No scratches, bruises, wounds or marks. We got home about half past six. We sat down to supper about a quarter to seven. Mr. Frank ate with us. We finished at a quarter past seven. We played cards that night in the dining room with a party of friends. Mr. Frank and his wife did not play. They do not play poker. They play bridge. He was sitting in the hall reading. Mr. Frank answered the doorbell and let in some of the guests. He came in once while we were playing cards to tell us about a joke that he had read about an umpire and he laughed out very heartily. He went to bed between ten and ten thirty. He told us all goodnight before going. Mrs. Frank followed a few minutes afterwards. We played cards until about twelve. I did not hear the telephone ring next morning. It did not wake me up. I saw Mr. Frank next day about 11 o'clock. I saw no blood spots or marks or bruises or cuts about him. I think he was arrested on Tuesday.

CROSS EXAMINATION.

I am not mistaken about seeing Mr. Frank about 1:20 on Memorial Day. We were eating dinner when he came in. Mr. Frank got home about 11 o'clock Sunday. He told us he had been sent for to come to town. He spoke of a crime having been committed. I asked him what had happened. I don't remember that he told me about the crime. He did not seem unconcerned about it. I said at coroner's that I thought he seemed unconcerned about it. I don't remember his remarking about the youth of the girl or the brutality of the crime. He didn't describe any wounds. He didn't give any theory as to how it happened. He was anxious as to how it happened. I have forgotten what suits Mr. Frank wore Saturday, Sunday and Monday. I think I said before the coroner that he wore the same suit Saturday, Sunday and Monday. But I was mistaken. I don't remember saying before coroner whether Frank evidenced any curiosity or advanced any theory about it or not. I knew he wore one suit during the week and a different one on Sunday, and my impression was that on that Sunday he wore the same one. I don't think Mr. Frank mentioned the name of the girl that was killed on

Sunday. The first that I knew of it was when I saw her name in the paper the next morning. The subject was mentioned at the dinner table on Sunday.

RE-DIRECT EXAMINATION.

My health is bad and I did not care to hear much of the facts of the crime at the time. I was operated on the next day. Mr. Frank spared my feelings. These are the clothes Mr. Frank wore on April 26th (Defendant's Exhibit 49).

MISS HELEN KERNS, Sworn for the Defendant.

I work for the Dodson Medicine Company as stenographer. My father works for Montag. I took shorthand under Professor Briscoe last winter. I have seen Mr. Frank in his factory. I went there with Professor Briscoe to get a job. I didn't get the position. I was working on the 26th day of April for Bennett Printing Company. That day I got off about 12 o'clock. I then went around in town to the different stores and did some trading. I had an appointment to meet a girl at 1:15 at the corner of Whitehall and Alabama Streets, at Jacobs' Drug Store. About 5 minutes after one I came out of Kress' Store on Whitehall Street. I looked at the clock in front of Freeman's Jewelry Store. I immediately went to Jacobs' corner. I had been standing there about five minutes and I turned around and saw Mr. Frank standing there right up against the building at the corner of Alabama and Whitehall street. I do not know how long he had been there. That was about ten minutes after one. After I saw him I waited about ten minutes until my friend came. She was a little behind time. She came about twenty minutes after one. I read about this tragedy about the middle of the week. I then recalled seeing him about that place and told my father.

CROSS EXAMINATION.

Yes, there was a large crowd on the street that day. I had been standing there about five minutes when I turned around and saw Frank. It was not packed and jammed at that time, not up against the building. The procession did not come along until almost three o'clock. There was plenty of room on that corner. I stood there from five minutes after one until twenty minutes after one. After I met my friend we went back to Kress'. I did not speak to Mr. Frank. He was standing up against the building up Alabama Street. It was not real crowded up Alabama Street. You could not stand in the middle of the sidewalk. I got a clear view of Mr. Frank. I don't think he saw me. I don't think he would have recognized me because he sees so many faces every day he would not know mine. I had only met him once. I recognized him. I can't be mistaken about the time I saw him because I looked at the clock just before I got there. When my friend met me we went around the corner. The clock stood twenty minutes after one. Kress' store did not close at 12, because I was in there after 12. I am sure of that. I was watching the

clock because I had an appointment at a quarter after one. I left Kress' at five minutes after one and went down Whitehall street to Jacob's corner. Whitehall street was badly crowded. It didn't take me more than a minute or a minute and a half to walk down to the corner. It was only a few steps. There was no one standing between Mr. Frank and myself on Alabama Street.

MRS. A. P. LEVY, Sworn for the Defendant.

I live right across the street from where Mr. Frank lives. I am not a relation of his either by blood or marriage. I saw him get off a car on Memorial Day between one and two o'clock. I was dressing to go to the matinee and was watching the cars as they passed to look out for my son who was late to dinner and saw Mr. Frank get off the car and cross the street to his home. I had a clock on my dresser and also one in the dining room, and I was hurrying to meet a friend at 2 o'clock, and I wanted to see a sick friend before going to matinee.

CROSS EXAMINATION.

I noticed that Mr. Frank got off at 1:20, because I was looking at the clock. I was watching the car for my son. I had already had lunch. I could not wait for him. He tried to get me over the phone but could not reach me. The reason I knew it was that time I was looking at my clock and noticing the cars as they passed and my son had not come yet. That was the only reason I would have noticed it.

RE-DIRECT EXAMINATION.

My children on Memorial Day instead of coming home at 12:20 or 12:30, came home at 1:30.

MRS. M. G. MICHAEL, Sworn for the Defendant.

I live in Athens. On April 26, I was at 387 Washington Street at 2 o'clock, at the residence of my sister Mrs. Wolfsheimer. Mrs. Frank is my niece by marriage. I am no kin to Mr. Frank. I saw Mr. Frank about 2 o'clock on April 26th. He was going up Washington Street towards town when I first saw him. I remember it was about 2 o'clock, because my son David was going to the matinee and he had to leave home before 2, and he had just left a few minutes when I saw Mr. Frank. I was on the front porch when I saw him. He came up just to the front porch. He greeted me and asked me about my people at home. We carried on a casual conversation. I noticed nothing unusual about him. I noticed no scratches or marks or any nervousness about him. He walked up Washington Street to the corner of Glenn and caught the Washington Street going to town at Glenn Street. My son Jerome, my nephew Julian Loeb and my sister Mrs. Wolfsheimer were also there and saw him.

CROSS EXAMINATION.

He had not seen me for several weeks. He didn't know I was in the city, and when he saw me there on the porch he came over to speak to me. 387 Washington Street is three doors above Georgia Avenue. I saw him take the car at the corner of Glenn and Washington Street.

JEROME MICHAEL, Sworn for the Defendant.

I live in Athens. I was in Atlanta on April 26th. I took dinner at Mrs. Wolfsheimer's residence at 387 Washington Street. I saw Mr. Frank upon that day between five minutes to 2 and 2 o'clock. I know it was that time because I had an engagement with a young lady and I had a watch in my hand most of the time. My brother Dave had just left for the opera when Mr. Frank came up. When I first saw him he was going toward the right hand corner of Washington Street and Georgia Avenue, going up Georgia Avenue. I saw him and called him and when he saw my mother standing on the porch he came over and spoke to her. He stood on the steps of the porch, he stood there just a few minutes until the next car came. I noticed absolutely nothing unusual about him. No scratches, bruises, marks and no nervousness. He ran up to the corner of Glenn and Washington Streets and caught the Washington Street car there going to town.

CROSS EXAMINATION.

I had my watch in my hand about the time I saw Mr. Frank. I practice law.

MRS. HENNIE WOLFSHEIMER, Sworn for the Defendant.

I am the aunt of Mrs. Frank. I live at 387 Washington Street, the third house from the corner of Georgia Avenue. On April 26th, I saw Mr. Frank in front of my house. It was about 2 o'clock. We had finished dinner which we ate at half past one. I was not on the porch when he came up but I walked out on the porch after he came. I did not see him catch the car as I was called in the house before he left. I saw nothing unusual about him. No nervousness or bruises or scratches. I saw no stains on his clothes, no marks or tears of any kind.

CROSS EXAMINATION.

The time is fixed in my mind because we ate dinner at half past one and we had just finished. I was not looking for any scratches or bruises, but I certainly would have seen them if they had been there. I was close enough to him to have seen him.

JULIAN LOEB, Sworn for the Defendant.

I live at 380 Washington Street, across the street from the Wolfsheimer residence. I am a cousin of Mrs. Frank. I saw Mr. Frank on April 26th in front of the Wolfsheimer residence. I was there when he came by. It was between 1:50 and 2 o'clock. He was talking to Mrs. Michael and Mr. Jerome Michael and was inviting them to attend a meeting of the B'nai B'rith lodge on the next day which was Sunday. He was president of that lodge. He left and walked towards town up Washington Street towards Glenn. I didn't see him catch the car.

COHEN LOEB, Sworn for the Defendant.

I was on the car with Mr. Frank going back to town on April 26th after lunch. I caught the car at ~~Georgia Avenue~~ and Washington Street. He caught the car at Glenn and Washington Street which is one block nearer town. That was about 2 o'clock. ~~It was a~~ Washington Street car ~~which~~ goes straight up Washington Street to the Capitol and turns down Hunter. We sat together on the same seat in the car. Mr. Frank got off the car about two or three minutes before I did. He got off in front of the Capitol at about 2:10. The car was blockaded by the crowd which was watching the parade. Mr. Frank went down Hunter Street. There was nothing unusual about him. No marks, or scratches or spots on him. He had on a brown suit and a derby.

CROSS EXAMINATION.

Mr. Frank was sitting next to the window. I know Mr. Hinchey. I did not recognize him as he passed our car in the machine but I recognized his machine. It was going down the street. I recognized it by the dark color. It passed right in front of the car so close as to hit the car and that's what called it to my attention. The top of the machine was up and the sides were open. The car was ~~a dark maroon~~ color and seats from four to seven passengers. I don't know the number of it. I just saw a dark maroon car. I found out afterwards that it was Mr. Hinchey. I only noticed that particular automobile because it ran up in front of the car and the car hit it and nearly turned it over. The accident accurred right at us. There was no jolt to the street car. It was going too slow. They just came together and scraped.

H. J. HINCHEY, Sworn for ~~the Defendant.~~

I have known Mr. Frank between four and five years. I am mechanical engineer for the South Atlantic Blow Pipe Co. I saw Mr. Frank on April 26th opposite the main entrance to the Capitol on Washington Street. I was driving an automobile. He was on the street car coming down Washington Street going to town. I saw him but did not speak to him. It was between 2 and

2:15. As to how I knew that was the time after this matter came up I experimented to see just what time it was I saw him on the car, and I have gone over my movements just as I did them on that day, and the first time I experimented I got to the Capitol five minutes past two, and the second time I got there at eight minutes past two, and the third time exactly at two o'clock. I came very near colliding with the car in front of the capitol, as I drove around in front of the Capitol. This car Mr. Frank was on rolled up in front of me. As I looked up at the car I saw Mr. Frank sitting in the front end of the car.

CROSS EXAMINATION.

I saw him only for a moment. I was too much occupied in trying to get out of the way of cars and vehicles. The crowd was very thick. I have been to see Mr. Frank once in jail. I mentioned to him that I saw him that day. Mr. Frank and I were only business friends. We have had pleasant business transactions and also controversies. I did not go to jail to talk it over with him. I went there because I had been knowing him for five or six years and was interested in him, because he was implicated in the case. We were not personal friends, but have had a great many business dealings with each other and I naturally felt an interest in this matter.

MISS REBECCA CARSON, Sworn for the Defendant.

I work at the National Pencil Co. I have been there over three years. I work on the fourth floor. I am forelady of the sorting department. I have from thirteen to fifteen girls under me. At times I have heard the elevator running when the machinery in the factory was not running. It makes a noticeable noise. You can notice the vibration of the building and you can notice the ropes of the elevator running, and you can hear the cables of the elevator knocking. On Friday, April 25, I got my pay about 5:30 from the office. On April 26th I saw Mr. Frank looking at the parade in front of Rich's between 2:20 and 2:25. He spoke to me. I saw him again at ten minutes to three going into Jacobs' Pharmacy at the corner of Whitehall and Alabama Street. I looked at the clock at that time. On Monday morning I said to Jim Conley, "Where were you on Saturday? Were you in the factory?" He said, "I was so drunk I don't know where I was or what I did." And Snowball, who was standing there, said, "I can prove where I was. I also overheard a conversation that he had with my mother when he said Mr. Frank was just as innocent as an angel; and when my mother said "The murderer will be the negro Mrs. White saw sitting on a box at the foot of the stairs," Jim dropped his broom quick and didn't finish sweeping.

CROSS EXAMINATION.

He made that remark to me about 8 o'clock Monday morning and I went right back and told my mother of it. The elevator makes enough noise to know it is running. You don't notice it when the machinery is running. You

wouldn't know whether it was running or not unless your attention is directed to it. I had looked at the clock five minutes before I saw Mr. Frank in front of Rich's. I had just looked at the clock also before I saw him going into Jacobs'. I am certain of the times I saw him. That was the exact time by the clock. I get $10.00 a week. Last time my salary was raised it was raised in January. There has been no raise since then. I had heard that some of the sweepers sometimes stay on Saturday afternoons to sweep. I didn't know it. I just asked him if he was there at the factory Saturday afternoon. He never before admitted being drunk to me before. Nobody suspected Jim of the murder at that time. I told my mother of it because I tell her everything. I told Mr. Darley about it. I don't remember when I told him. It was before Conley was arrested on Thursday. I told Mr. Rosser when he was at the factory. That was after Jim was arrested. I did not see the red spot in the metal room on Monday. I didn't go in the metal room until Tuesday. I didn't see it then, because I wasn't looking at the floor.

MRS. E. M. CARSON, Sworn for the Defendant.

I worked at the Pencil Factory three years. Rebecca Carson is my daughter. I am a widow. I have seen blood spots around the ladies dressing room three or four times. I was at the factory Friday morning. I left about 12:45. I saw Jim Conley on Tuesday after the murder. He was sweeping around my table, I said, "Well, Jim, they haven't got you yet," and he says, "NO." On Wednesday I said the same thing and he answered the same thing. On Thursday when I said that to him again he said, "No, I ain't done nothing." I said, "Jim, you know Mr. Frank never did that," and he says, "No, Mr. Frank is as innocent as you is, and I know you is." I said, "Jim, whenever they find the murderer of Mary Phagan it's going to be that nigger that was sitting near the elevator when Mrs. White went upstairs." He laid his broom down then and went out. I could not believe Conley on oath.

CROSS EXAMINATION.

My daughter and I work on the fourth floor. Mr. Frank was up on the fourth floor Tuesday between nine and eleven o'clock. Everybody in the department was around there at that time. I don't know whether any of them heard the conversation between me and Mr. Frank then. I saw both Mr. Frank and Jim Conley on the fourth floor on Tuesday. I did not see Mr. Frank whisper to Conley. Mr. Frank never said a word to any of us about sticking to him. He said it was a deplorable thing little Mary being killed. I have seen blood in the dressing room around the lockers and some around the mirror. I have seen girls up there mash their fingers on the machines. I have seen blood in the sink in the toilet room and on the machines where they cut their fingers. I saw a spot as big as my hand sometime last year on the fourth floor near a garbage can. It looked like blood to me. I have seen spots about as big as my finger, different spots up on the fourth floor. I have

seen girls once or twice come in with their fingers mashed come into the toilet room and go to the sink after they had mashed their fingers. I don't know when I heard that Mrs. White said that she had seen a negro sitting on the box. I think I read it in the paper sometime that week. The big spot of blood I was talking about was occasioned by the girls whose sickness was on them. I have never seen Mr. Frank or anybody else have anybody down at the office at any time drinking beer or doing anything of the sort. I did not go down and see blood on second floor near dressing room.

MISS MARY PIRK, Sworn for the Defendant.

I am one of the foreladies working at the National Pencil Co. I am at the head of the polishing department. I have been there about five years. I talked with Jim Conley Monday morning after the murder. I accused him of the murder. He took his broom and walked right out of the office and I have never seen him since. His character for truth and for veracity is bad. I would not believe him on oath.

CROSS EXAMINATION.

I suspected Jim as early as Monday April 28th. I did not report it to Mr. Frank then. I don't know why I didn't. I knew that Gantt and Newt Lee and Mr. Frank had been arrested. Yes, I have never said anything about it to anybody. I suspected Jim because he looked and acted so different. I told Mr. Arnold and Mr. Rosser about it when they asked me about it. That was after Jim was arrested. Jim acted very peculiar but I thought best not to say anything about it. I knew the company was anxious to get the murderer but I just didn't mention it. I don't know why. I mentioned it to several of the girls standing around, Miss Denham, Miss McCord, Mrs. Johns and several others. I accused Jim before I saw the blood at the ladies' dressing room. It was all smeared over with some kind of white stuff. It covered about two feet in area. I mentioned it to the girls before Jim was arrested. I am not sure whether it was before or after. It was after the coroner's inquest. I have seen several spots in the factory that looked like that spot many times. All kinds of spots. I have seen spots before that looked like that. I don't exactly know when. My opinion is that Mr. Frank is a perfect gentleman. I always found him to be one in my dealings with him. I have never heard any of the girls say anything about him. I have never heard of a single thing immoral that he did do in those five years. I have never heard of his going in the girls' dressing room. I have never heard of his slapping them as he would go by. I have never heard Mr. Frank talk to Mary. I have never heard of the time Mr. Frank had her off in the corner there when she was trying to go back to work.

MISS DORA SMALL, Sworn for the Defendant.

I worked on the fourth floor of the pencil factory for five years. I saw Jim Conley on Tuesday. He was worrying me to get money from me to buy a newspaper and then he would come and ask me for copies of the paper before I would get through reading them. They were extras. He would even get two of the same edition. He would take it and run over there and sit on a box by the elevator and read it. He can read all right. He had on an old Norfolk coat with a belt around it and it buttoned just as tight around his neck as it could be. Before that he had gone around there all open and loose and as slipshod as he could be. I could not tell whether he was wearing a shirt or not because his coat fastened up so tight. He told me Mr. Frank is just as innocent as I am and he says. "God knows I was noways around this factory on Saturday." I didn't see Mr. Frank talking to Jim anywhere in the factory on Tuesday. I have never seen him talk to that nigger in my life. I have never been down in Mr. Frank's office after hours, drinking or doing anything wrong at any time. I have known Conley for two years. His general reputation for truth and veracity is bad. I don't know of any nigger on earth that I would believe on oath.

CROSS EXAMINATION.

I would not believe Snowball on oath. I would not believe any nigger. I got a fifty cent raise in salary about four months ago. I have got no raise since Mr. Frank has been locked up. It was before this murder took place. I did not see Mrs. Carson talk to Jim on Tuesday or Wednesday. She worked in one end of the building and I worked in the other. I saw Mr. Frank and Miss Carson talking on business between eight and nine o'clock on Tuesday. They stopped right in front of my machine. Mr. Frank went down stairs and Miss Carson went on back to her work. He used to come up there frequently. Conley was standing at the elevator. He was standing with his hand on a truck. He was not sleeping. He must have seen me and Mr. Frank. Mr. Frank did not see Conley. When Mr. Frank went down the steps Conley was still standing at the elevator. Conley was asking me for newspapers all during the morning every time they would holler "extra." He would come to me. That was after Mr. Frank had gone. That continued all day Tuesday and Wednesday. I didn't buy any extras on Monday. I bought four before noon on Tuesday. The elevator makes a right smart noise. Shakes the whole building. Any body in the world can tell it is running if the machinery is not running; but you can't notice it much unless you are right close to the elevator. Some of us went back in the metal room one day to see if we could see any blood spots. Mrs. Carson and Mrs. Thompson I think were with us. Curiosity led us down there. We saw where the floor had been chipped up. Saw something that looked like white face powder around the chipped up place. Looked like some of the girls had powdered their faces and spilt the powder. There were two or three spots, some the size of a nickle and some the size of a quarter. The floor was very dirty all over.

MISS JULIA FUSS, Sworn for the Defendant.

I work on the fourth floor of the pencil factory. I have never known anything wrong or immoral to be going on in Mr. Frank's office. I talked with Jim Conley Wednesday morning after the murder. He was sweeping around there and asked me to see the newspaper. As he read it he kinder grinned. He told me he believed Mr. Frank was just as innocent as the angels from Heaven. I know his general character. He was never known to tell the truth. I would not believe him on oath.

CROSS EXAMINATION.

I saw the dark red spots by the water cooler in the metal room where they had chipped up something. Something white was dropped all over it. The spots did not look like they had been smeared over. Looked like a plain drop of blood. I think it was paint because there was paint used there all the time. They asked me soon after the murder about the general character of Frank. They asked me if I knew anything against his character and I told them no. They generally spoke well of him. They always spoke good of him. I have always heard him spoken of in the highest terms. I have never heard him accused of any act of immorality or familiarity with the girls in the factory. Jim Conley got two papers from me on Tuesday and Wesdnesday. I bought them. Jim always seemed to be kind of nervous or half drunk or something. He did not arouse my suspicions until after he began to read the papers and grin about them and comment on them. I didn't see Mr. Frank speak to Conley on Tuesday. Conley was not there. I am sure of that. Mr. Frank came up there twice, once at 9 and again in 15 or 20 minutes. He came around to see if everything was in good working order. He spoke to Miss Carson and Mr. Darley and to a little boy. And then went on down stairs. He came back in about fifteen or twenty minutes to see if everything was going on alright. He spoke to Miss Carson again about the work. He always came upstairs to see if everything was going on all right.

EMMA BEARD (c), Sworn for the Defendant.

I am Mr. Schiff's servant. On April 26th somebody called Mr. Schiff on the telephone. I answered the telephone. It was about half past ten. It sounded like a boy's voice. It said, "Tell Mr. Schiff Mr. Frank wanted him at the office." Mr. Schiff was asleep at the time. I waked him up and he said, "tell Mr. Frank I will be there as soon as I can get dressed." And I repeated the message to the boy and told him what Mr. Schiff said. Then Mr. Schiff went back to sleep again. The same voice called up Mr. Schiff again about eleven o'clock. Said he wanted Mr. Schiff to come down to the office. Mr. Schiff told me to tell him he would be there as soon as he could get dressed and I told him what Mr. Schiff said.

CROSS EXAMINATION.

I have been in Mr. Schiff's house about seven years. On Saturdays and holidays Mr. Schiff generally sleeps. Sometimes he goes to the factory when I wake him up. He never gets up unless I wake him. Mr. Schiff told me sometime afterwards he was glad I did not wake him up that day. I know it was eleven o'clock when he called up the second time, because the clock was striking. They didn't say what Mr. Frank wanted him for.

ANNIE HIXON (c), Sworn for the Defendant.

I am Mrs. Ursenbach's servant. Mr. Frank called up on the telephone about half past one on April 26th. I told him Mr. Ursenbach was not in and he said "Tell Mr. Charlie I can't go to the ball game this afternoon." I told Mrs. Ursenbach about it.

CROSS EXAMINATION.

I have been working for Mrs Ursenbach two years. Mr. Frank and his wife came over to Mrs. Ursenbach's on Sunday after we had breakfast about nine o'clock. They come over there every Sunday. I didn't pay any attention to what they talked about that morning. They were just laughing and talking like they always do. Yes, he laughed. They were all laughing together. He wasn't nervous or excited so far as I could see. Nothing unusual about him. Don't know what they were laughing about.

J. C. MATTHEWS, Sworn for the Defendant.

I was at Montag Brothers on April 26th. I saw Mr. Frank in the office of Montag Bros., in the morning of that day. I couldn't give you the exact time. I work at Montag Bros.

ALONZO MANN, Sworn for the Defendant.

I am office boy at the National Pencil Company. I began working there April 1st, 1913. I sit sometimes in the outer office and stand around in the outer hall. I left the factory at half past eleven on April 26th. When I left there Miss Hall, the stenographer from Montag's, was in the office with Mr. Frank. Mr. Frank told me to phone to Mr. Schiff and tell him to come down. I telephoned him, but the girl answered the phone and said he hadn't got up yet. I telephoned once. I worked there two Saturday afternoons of the weeks previous to the murder and stayed there until half past three or four. Frank was always working during that time. I never saw him bring any women into the factory and drink with them. I have never seen Dalton there. On April 26th, I saw Holloway, Irby, McCrary and Darley at the factory. I didn't see Quinn. I don't remember seeing Corinthia Hall, Mrs. Freeman, Mrs. White, Graham, Tillander, or Wade Campbell. I left there 11.30.

CROSS EXAMINATION.

When Mr. Frank came that morning, he went right on into the office, and was at work there and stayed there. He went out once. Don't know how long he stayed out.

M. O. NIX, Sworn for the Defendant.

I am credit man for Montag Bros. and bookkeeper. I have charge of the bookkeeping and documents and papers of the National Pencil Company. I am familiar with Mr. Frank's handwriting. These financial sheets beginning with May 22nd, 1912, and ending May 24, 1913 (Defendant's Exhibit 9), are in Mr. Frank's handwriting. The eleven items beginning with order No. 7187 running through No. 7197, appearing on pages 56 and 57 of the house order book (Defendant's Exhibit 12) are in Mr. Frank's handwriting. These entries below that are in Miss Hattie Hall's handwriting. I employed Miss Hattie Hall as my stenographer. Mr. Montag and Mr. Frank had nothing to do with it. I raised her wages on first of August, because I promised her that when she first came here. These eleven requisition sheets (Defendant's Exhibit, 25 to 35 inclusive) are in Mr. Frank's handwriting. I saw Mr. Frank on the morning of April 26, at Montag's. He asked me to allow Miss Hattie Hall, my stenographer, to go over to the factory to assist him as his stenographer was away and he was piled up with work. And I told him I didn't think she should go until she finished Mr. Montag's mail. He said something then about her coming over in the afternoon, and I said I didn't think she ought to work over there as it wasn't her work, and I told her not to do it, but I told her if she got through with Mr. Montag's mail she could go overe there that morning and help him, if she could assist him in anyway.

CROSS EXAMINATION.

I have never seen Frank write any of the documents which I say are in his handwriting. I have seen him write. I don't know their system of doing work down at the factory. This order could not have been received on April 22nd (Defendant's Exhibit 27). The signature of H. G. Schiff on the requisition sheets (Defendant's Exhibits 25 to 35 inc.) means that he checked it when the order was filed. I have been with Montag Bros. seven or eight years. I don't know whose handwriting that is (State's Exhibit K). It looks like Mr. Frank's, but it is not clear to me. It is entirely different from his usual handwriting. It is different from those I have identified positively as Mr. Frank's, but it is figures on those, and here it is in the form of a letter. There is no comparison. With a few capital letters you can't get an idea of a man's handwriting. I am not positive that that is Mr. Frank's handwriting. It might be. You take this sheet here (requisition sheet) and you can't get an idea of a man's handwriting from this, because everything is figures in here. His writing might be entirely different if he sat down to write a letter.

RE-DIRECT EXAMINATION.

I have never seen a letter written by Mr. Frank. The only writing of his that I am familiar with are figures and things like that, pay-rolls, writings in requisitions and words that consists largely of abbreviations.

HARRY GOTTHEIMER, Sworn for the Defendant.

I am a traveling salesman. I make two trips a year for the National Pencil Company, from the first of February to the first of April, and from the first of September to the fifteenth of October. I was at Montag Bros. around ten o'clock on April 26th. I had come in from my trip on the road and was writing up my orders. I had been away ten days. Mr. Frank came in after I got there. I asked him about two important orders as to their shipments and he replied that he couldn't tell whether they had been shipped or not, but that if I would return to the factory with him he would give me the duplicate invoices and let me see for myself. I replied that I would not have time to go back, as I had lots of orders. He says: "If you can't come now, come this afternoon." And then he walked in to Mr. Montag's office, and as he went into the office he said "Come up now, or come up after dinner."

CROSS EXAMINATION.

I saw Frank in his office one Saturday afternoon in the early part of April about three o'clock. His wife was there doing some stenographic work for him. Mr. Frank said Saturday morning, April 26th, that if I couldn't come to the factory in the morning that I should come in the afternoon. I am sure of that conversation. Miss Hall heard part of it. I had been in his office on previous Saturday afternoons. I never found any of the doors locked. He was always working.

MRS. RAE FRANK, Sworn for the Defendant.

I am the mother of Leo Frank. I live in Brooklyn. I lived in Texas three years, where Leo was born. Mr. Moses Frank of Atlanta is my husband's brother. I saw him at Hotel McAlpin in New York City on April 27 and April 28. The letter that you hand me (Defendant's Exhibit 42) I saw on Monday, April 28th. It is my son's handwriting. This sheet (Defendant's Exhibit 43) is a sort of financial sheet. I had lunch with Mr. Moses Frank at Hotel McAlpin on Monday, April 28th. His wife read this letter to him in my presence and it was handed to me afterwards. I also saw that sheet (Defendant's Exhibit 43) but I did not understand it. The handwriting on that envelope (Exhibit for Defendant, 44) is that of my son. The word "Yondiff" in the letter is Hebrew, meaning "Holiday."

CROSS EXAMINATION.

The letter was folded exactly as it is now to the best of my recollection, just in that shape. Mr. Frank has no rich relatives in Brooklyn. That is my son's handwriting (State's Exhibit K). It is a photographic copy. There was another paper included in the envelope which that letter came in, some price list, but I didn't look at it. It had numbers of pencils and prices on it. That letter was read in Hotel McAlpin, in Mr. Moses Frank's room. As to what relatives Mr. Frank has in Brooklyn, my brother-in-law, Mr. Bennett, is a clerk at $18 a week. My son-in-law Mr. Stearns is in the retail cigar business. As to what my means of support are, we have about $20,000 out at interest, my husband and I, at six per cent. We own the house we live in. We have a $6,000 mortgage on it. The house is worth about $10,000. My husband is doing nothing. He is not in good health. Up to a year ago he was a traveling salesman. These are the only relatives my son has in Brooklyn. Mr. Moses Frank, my brother-in-law, generally spends a Sunday with us in Brooklyn, before he sails for Europe. He spends Sunday with us in Brooklyn and has dinner with us. He was not in Brooklyn on April 26th. He is supposed to be very wealthy. I don't know how much cash my husband has in bank. A few hundred dollars possibly. My husband is 67 years old. He is broken down from hard work and in very poor health. He was too unwell to come down here.

OSCAR PAPPENHEIMER, Sworn for the Defendant.

I am in the furniture business. I am also a stockholder of the National Pencil Company. I have been getting comparative sheets as to the weekly business of the Company from Frank since March, 1910. Up to the time the Post Office distributed mail on Sunday, I used to always go to the Post Office to get my mail and always found this report on Sunday morning. When I quit going to the Post Office on Sundays I received the reports in the first mail on Monday mornings. I have here the report for the week ending April 24, 1913 (Defendant's Exhibit 45). I got that on Monday morning, April 28th. I also have here all the comparative sheets received by me every week beginning January 18, 1912, up to April 24, 1913 (Defendant's Exhibit 46).

C. F. URSENBACH, sworn for the Defendant.

I married a sister of Mrs. Leo Frank. I phoned him on Friday and asked him if he would go to the baseball game Saturday. He said he didn't know, he might go and would phone me later and let me know. On Saturday when I got home about twenty minutes to two my cook told me that Mr. Frank had phoned and told me that he wasn't going to the game. I saw him on Sunday, after the murder, at my house. I saw no scratches, marks or bruises on him. He seemed to be a little disturbed in mind. I saw him again that afternoon. He told us about the tragedy. That evening we met

him and his wife coming down Washington street opposite the Hebrew Orphans Home. He gave me my rain coat right there, which he had borrowed previously.

CROSS EXAMINATION.

He and his wife and my wife and myself generally play cards Saturday evening. We were very much interested in bridge and played together often. Mr. and Mrs. Selig's family usually played poker Saturday night. Mr. Frank and his wife never played poker. I am positive I rang Mr. Frank up and asked him to go to the ball game. Mr. Frank called it off about one thirty on Saturday; when I got home and got the message from my cook it was twenty to two. Mr. Frank borrowed my rain coat at 4:30 on Sunday when it was raining, and I met him about 6 o'clock on Washington Street, and he returned it. He never had that rain coat until Sunday afternoon. I am positive that he did not have it on Saturday.

MRS. C. F. URSENBACH, sworn for the Defendant.

I am Mrs. Leo Frank's sister. I received a telephone message for Mr. Ursenbach from Mr. Frank through my cook on Saturday at half past one. I saw no scratches, bruises, or marks on Mr. Frank on Sunday. He was nervous as one would have been under the circumstances. He borrowed a rain coat from my husband that afternoon. The rain coat was at our house on Saturday. It was there when my husband asked him if he would wear it on Sunday. Mr. Frank did not have it on Saturday.

CROSS EXAMINATION.

On Sunday Mr. Frank when he was at the house told us he had been called down town and that this little girl was murdered, and he told what a horrible crime it was. He did not say who committed it. He said nothing about employing a lawyer. He said nothing about how he slept the night before. I think he told about being at the undertaker's in the afternoon. I did not hear him say anything about his visit to the undertaker's in the morning. He said he had been taken down to the factory in the morning by the detectives. He said he had thought he heard the telephone ringing in his sleep, the night before. He said when he saw the corpse it was a grewsome sight. He said nothing about why he did not stay in the room and look at the corpse longer or more carefully. He said nothing about suspecting Newt Lee as being the guilty party. He said he was sorry he let Gantt in the factory Saturday afternoon, because he mistrusted him, because he had not been honest. He did not say he thought Newt Lee or Gantt had committed the crime. He said nothing about the clock having been improperly punched. I was not in the room the entire time. I had guests and I was out a good deal of the time. I don't know if he knew the name of Mary Phagan then or not. I think he said she was choked. He didn't

say anything about a cord around her neck but said she had a frill of her petticoat around her neck. He mentioned he had paid her off the Saturday before. I don't know that he mentioned the name of the girl at all at that time. He said he had discharged Gantt because he was not honest. I think he said Newt Lee was a good fellow as much as he knew about him. On Monday night over at Selig's Mr. Frank was there and we had a conversation on the subject. He spoke of having a detective at the house in the morning, that the detectives thought that he had done it and how strange it was that they should say so. He didn't say that he suspected anybody. He seemed to be calm as usual that night. He never mentioned suspecting anybody of the crime. On Monday night he said he had been suspected in the morning by the detectives. That night he sat on the couch and patted his foot. That was the only indication of nervousness I saw. Mr. Frank did not have Mr. Ursanbach's rain coat on Saturday. It was in our house all day Saturday and until my husband asked him Sunday if he would wear it.

MRS. A. E. MARCUS, sworn for the Defendant.

I am a sister of Mrs. Leo Frank. I played cards Saturday night at Mrs. Selig's. Mr. Frank was there sitting out in the hall reading, and Mrs. Frank was going in and out of the room. Mr. Frank went to bed after ten o'clock. I noticed nothing unusual about him, no bruises, marks or signs.

CROSS EXAMINATION.

He came in one time and told me something funny about a baseball joke. We were still playing when he went to bed.

MRS. M. MARCUS, sworn for the Defendant.

I am no relation of Mr. or Mrs. Frank. I saw Mr. Frank at half past eight or a quarter to nine in the evening on April 26th, at Mrs. Selig's residence. We played cards there. Mr. Frank opened the door for us. He stayed in the hall reading. We played cards in the dining room. He went to bed between ten and half after ten. He appeared as natural as usual. I left the house about twelve o'clock.

CROSS EXAMINATION.

We had a game of cards every Saturday afternoon at somebody else's house.

M. J. GOLDSTEIN, sworn for the Defendant.

I played cards Saturday night, April 26th, at Mrs. Selig's house. I got there about 8:15. We played in the dining room. Mr. Frank was sitting in the hall. There was nothing unusual about him, no nervousness or anxiety.

There was nothing that attracted our attention. I have never known Mr. or Mrs. Frank to play poker. I should say he went to bed about 10:30. His wife followed about fifteen minutes afterwards. I never noticed any marks or bruises about his person.

CROSS EXAMINATION.

He came in while we were playing to tell us of some joke he had read, and we asked him to desist as it was distracting us from the game. Frank was reading a magazine which caused him considerable merriment and laughter.

I. STRAUSS, sworn for the Defendant.

I was at the home of Mrs. Selig, Saturday night, playing cards. I got there about 10:30. Mr. Frank let me in. While we played he was sitting in the hall reading. I could see him through the door. There was nothing unusual about him. He went to bed immediately after I got there. His wife went to bed soon afterwards.

MRS. EMIL SELIG, recalled for the Defendant.

(Witness denies categorically that any of the contents of Minola McKnight's affidavit (State's exhibit J) are true.) I have never raised Minola's wages one penny since she has been with me.

CROSS EXAMINATION.

I didn't see Albert McKnight at my house on Saturday. He has been to the house two or three times. I was in bed when Mr. and Mrs. Frank went down stairs Sunday morning in response to the ringing of the telephone. Mr. Frank got home about eleven o'clock Sunday morning and then ate his breakfast. He and his wife went out together. Minola was paid $3.50 a week. I advanced her a week's wages. I don't know what week that was. I didn't pay her anything the next week. The first week I gave her $5.00 and told her to give me the change. She brought $1.00 the next morning, and told me she kept 50 cents which I deducted the next week. I think Mrs. Frank gave her a hat. I don't know when that was. Mrs. Frank has never given her any money to my knowledge.

SIGMUND MONTAG, sworn for the Defendant.

I am engaged in manufacturing stationery. I am treasurer of the National Pencil Company. The company receives its mail at my office, which is two blocks from the pencil factory. Frank comes to my office every day of the year to get the mail and instructions with regard to orders and the business of the factory. He came to my office on April 26, about ten o'clock

and stayed about an hour. He talked to me, my stenographer, Miss Hattie Hall, and Mr. Gottheimer, one of the salesmen. Up to about a year ago I went to the factory almost every Saturday afternoon. Mr. Frank would always be working at his desk on the financial sheet. The telephone in my house is about 20 feet from my bed. I did not hear it ring Sunday morning. My wife was aroused by its ringing and she waked me. The man at the other end asked me if I could identify a girl that was killed in the basement of the pencil factory. I referred him to Mr. Darley who was most familiar with the help in the factory. After breakfast Mr. Frank came to my house. It was a raw, chilly morning. He was no more nervous than we were about the murder when we saw him that morning. I was very much agitated and trembled. My wife was very nervous and commenced to cry. I saw no marks, scratches or discolorations of any sort on his face, and there were no spots on his clothing. I went to the factory that morning and made a general examination, including the metal room. We saw nothing on the floor. Frank was very much nervous and agitated when he told us about the occurrence. We have a great many accidents in the metal room. They would be brought to the front of the building into the office. I heard that about nine o'clock Monday morning Mr. Frank had been taken to police headquarters. I knew that he had a very limited acquaintance there and I therefore telephoned for Mr. Herbert Haas, my personal counsel and counsel for the pencil company to go down there. Mr. Haas answered that he didn't like to leave home that morning, that his wife was expecting a new arrival, so I sent my automobile after him. Mr. Haas came back and said he was refused admittance to Mr. Frank at the station house, and said he was going to telephone Mr. Rosser. He then telephoned for Mr. Rosser. That was between half past ten and eleven. Mr. Rosser came down to the station house thirty of forty minutes later. I saw Mr. Rosser go upstairs. About forty minutes later Mr. Black and Mr. Haas left police headquarters with Mr. Frank. I always received the financial sheet on Monday morning. Mr. Frank would bring them over in envelopes. I saw the financial sheet of April 24 (defendant's exhibit 2) on Monday afternoon about three o'clock. That was after Mr. Schiff called me over the telephone and asked me if I would sanction the employment of the Pinkertons to ferret out this crime, and I told Mr. Schiff to go ahead. I told him and Mr. Darley to help the authorities all in their power to find out the murderer, whoever he might be.

CROSS EXAMINATION.

Mr. Frank was well acquainted with our attorney, Mr. Haas. He was president of the B'nai B'rith. The B'nai B'rith has between four or five hundred members, I should say. When I say that Mr. Frank had a limited acquaintance, I meant that the people around police headquarters did not know Mr. Frank. Mr. Frank did not ask for an attorney. Mr. Schiff told me that Mr. Frank had spoken to him about employing the Pinkertons. Mr. Frank was very nervous when he was at my house Sunday morning. He

had already been to the undertaker's. He told me they had taken him into a dark room and flashed on a light, and he said he saw the little girl there. He described how she looked. He said her face was scratched and her eye was discolored, and she seemed to have a gash in her head. Her mouth was full of sawdust and he described her in a general way. He did not call my attention to his being nervous. He did not say anything to me about an attorney or about having been to police headquarters. I don't know whether he had been to police headquarters or not. I authorized the employment of the Pinkertons on Monday. I had not then employed counsel. My sending Mr. Herbert Haas to see Mr. Frank was not employing counsel. I made no trade with Mr. Haas. Don't know who is paying his fee. I have not contributed anything towards it, nor has the Pencil Company. The Pencil Company is employing the Pinkertons. As to whether they have been paid yet or not, they haven't requested their pay. They have sent bills two or three times. I received the reports from the Pinkertons. They came sometimes every day and then sometimes they didn't for a few days. I got the report about finding the big stick and the pay envelope. I did not request the Pinkertons to keep the finding of the stick and the envelope from the police and authorities. We have little accidents almost every two weeks in the factory. There was one big accident about a year ago, a machinist, Gilbert, had his head bursted open in the metal department. That was about a year ago. The insurance company ordered us to clean up the factory about a week after Mary Phagan's death.

RE-DIRECT EXAMINATION.

Superintendent Pierce, of the Pinkertons, told me that his reports would be furnished to the police before they came to me.

TRUMAN McCRARY, (c.), sworn for the Defendant.

I am a drayman on the streets of Atlanta. I work for the National Pencil Company. I have hauled for them. I have drayed for them most every Saturday for the past three years. I would work on Saturday afternoons until half past three and sometimes as late as five. I would be sometimes there so late the shipping clerk would be gone. I have never found the front door locked on a Saturday afternoon. I have never seen Jim Conley watching there Saturday afternoon. I have never seen him guarding the door. I have never seen him around the factory at all Saturday afternoon. I have never found the doors to Mr. Frank's inner or outer office locked. Both doors have glass windows in them. Anybody could see through them. I have sometimes found Mr. Schiff working there with Mr. Frank on Saturday afternoon. I did not see Jim Conley at the factory April 26th. I did not tell him to go down in the elevator shaft and ease his bowels. I went into Mr. Frank's office about twelve o'clock on April 26th. Mr. Frank was there.

CROSS EXAMINATION.

I did not haul any for the pencil factory on April 26th. I took a sack of hay there. That was about 7:30. I didn't see Mr. Frank upstairs that time. I did not see Jim Conley at all that day. It may have been as late as 8:30 that I reached the factory that day. Mr. Frank was not there. I was paid sometime before 12 o'clock that day. The boxes are piled around in there pretty high around the elevator going down there. There are some pretty large ones, four or five feet high. They are piled around the stairway. I have never seen them use that door to the Clarke Woodenware space. I have used it once to haul out a lot of trash. No I have never seen Jim Conley sweeping up there Saturday afternoon. There was one Saturday afternoon that I didn't go up there. That was since Christmas. I think it was in April. I went up there every afternoon in January.

D. J. NIX, sworn for the Defendant.

I was office boy at the pencil factory from April, 1912, to October, 1912. I worked there every other Saturday until the first of September, and then every Saturday thereafter. I am 19 years old. Before September 1, I worked on Saturdays until between four and six o'clock. On Saturdays after September 1, I worked until between 5:30 and 6. I have never missed any days while I have been at the factory. On Saturday afternoons, Mr. Frank and Mr. Schiff would be there working. I would stay in the outer office. I never left the factory on Saturday afternoon. I have never known Mr. Frank to have any women in his office drinking or doing anything else.

CROSS EXAMINATION.

I never stayed there every Saturday afternoon in the summer months. Every other Saturday afternoon then I got off at one o'clock. No, I don't know anything about Mr. Schiff and Mr. Frank and others taking women down the alley on Forsyth St. and around the back door. He did not have any women in the factory when I was there, and I worked every Saturday after the first of September until the first of October. In the summer I worked every other Saturday afternoon.

FRANK PAYNE, sworn for the Defendant.

I was office boy last Thanksgiving day at the pencil factory. It was snowing that day. I am 16 years old. Mr. Schiff and Mr. Frank were working there in the office that day. Mr. Schiff sent me up on the fourth floor to straighten the boxes up. Jim Conley was there sweeping. He left the factory about 10:20. I left about 11. He had finished his work. I went by the office to get my coat. Mr. Schiff and Mr. Frank were still working. When I left I did not see Conley anywhere about the door. For two months

I worked at the factory on Saturday afternoons until 3:30 or four. Mr. Schiff and Mr. Frank would always be working in the office. I have never known him to have any women in there, or see any drinking going on. I would go to dinner about 1 or 2 o'clock. Mr. Frank would go about 12:30 to one and get back about three. I would stay in the inner office all the time. Mr. Schiff sat right across from me in the inner office. I would go to Montag's and stay about ten or fifteen minutes.

CROSS EXAMINATION.

I quit work at the factory seven or eight months ago to get a better job. Mr. Schiff was with Mr. Frank every Saturday afternoon I was there. I never went back at nights. I have never seen any beer bottles around there. I don't know whether Jim Conley came back after he left there at 10:30 on Thanksgiving Day. I saw him go down the stairs. I did not look for him as I went down. I did not notice him.

PHILLIP CHAMBERS, sworn for the Defendant.

I am 15 years old. I started working for them December 12, 1912, as office boy, at the pencil factory. I left there March 29, 1913. I stayed in the outer office. On Saturdays I stayed until 4:30 and sometimes until 5 o'clock. I never left before 4:30 on Saturdays. I would go to dinner about 1:30 and get back at 2. Sometimes on Saturdays I would be sent to Montag's for 15 minutes, to get the mail. I would sometimes go out to the Bell Street plant to get the payroll there. I would get back at 12 o'clock. I have there. I have never seen Dalton come in there. I have seen Jim Conley Mr. Frank never did have any women there. I never saw any drinking there. I have never seen Dalton come in there. I have seen Jim Conley sweeping there Saturday afternoon. Snowball would be in there once in a while. I have never known the front door to be locked on Saturday afternoon. After a certain time all the sweepers, including Conley and Snowball, had to leave the factory at noon. Mr. Darley gave them orders they could not sweep in the afternoon. After that I never saw any of them around there Saturday afternoon. I have never seen anybody watching the door on any Saturday that I was there, or any other day. I have seen Mr. Frank's wife come to his office once. Mr. Schiff would be helping him on some of the Saturdays that I would be there. I have never seen Mr. Frank familiar with any of the women in the factory. I have never seen him talk to Mary Phagan at all.

CROSS EXAMINATION.

Mr. Frank and I were good friends, just like a boss ought to be to me. I don't know anything about Mr. Frank's telling Conley to come around and not let Mr. Darley see him.

GODFREY WEINKAUF, sworn for the Defendant.

I am superintendent of the Pencil Company's lead plant. Beginning with July, 1912, up until the first week in January, 1913, I visited the office of the pencil factory every other Saturday, between three and five o'clock. I would stay there about two hours. I would find Mr. Holloway, Mr. Frank and Mr. Schiff there. I never saw any women in the office there.

CROSS EXAMINATION.

I never saw Jim Conley there at the factory on Saturday afternoon. I am sure I saw Holloway there on Saturday afternoon.

CHARLIE LEE, sworn for the Defendant.

I am a machinist at the pencil factory. I remember an accident to Duffy in the metal room. His finger was hurt on the eyelet machine, about October 4, 1912. It bled freely and the blood spouted out. There was a lot of the blood on the floor. He went down the hall to the office, by the ladies' dressing room. There was blood at that point. Gilbert also got hurt in the metal room last year. He was bandaged in the office also. In going from the metal room to the office, you go right by the steps.

CROSS EXAMINATION.

I have been with the company two years and four months. Two weeks ago my wages were raised 2 1-2 cents an hour. Mr. Darley raised them. I have not talked to anybody about what I was going to swear in this case. I did not see Gilbert get hurt up there. I saw him after he was dressed. Duffy was hurt in the metal room on the machine opposite Mary Phagan's machine. The pencil company took a written statement from me, signed by me, to keep the fellow from suing the company. I saw my signature this morning. I have never told you I signed that statement. The blood was streaming from his finger and dropped all over the floor. The whole floor was bloody. He came out down the hall to the office. He stopped about in front of the dressing room, about three steps from the water cooler and asked me which office to go in. The blood was streaming from his finger while he was standing there, about eight or ten seconds. It dropped just in one place, holding his hand like this. It wasn't cleaned up, they only sweep the floor once a week, that's all the cleaning it gets. I never noticed it after that time. I have never taken any notice whether you can see that blood there now. Duffy was cut right near where those chips were taken up on the floor. It might have been the same place. It was right near there. I wouldn't say it was the same spot or not.

ARTHUR PRIDE (c), sworn for the Defendant.

I worked on the second floor of the factory. On Saturdays I work all over the factory, doing anything that is necessary. Beginning with July of last year I have not missed a single Saturday afternoon at the factory. I would work until about half past four. I have never seen any women come up there and see Mr. Frank, or any drinking going on there, or seen Jim Conley sitting and watching the door. The employees used the back stairs leading from the metal room to the third floor. You can hear the elevator running if the machinery is not running. It makes a roaring noise and you can hear it on any floor. The motor makes a noise, and you can see the wheels moving on the fourth floor. I know Jim Conley's general character for truth, and veracity; it is bad. I would not believe him on oath. I wouldn't believe him on oath, because him and his whole family lied to me.

CROSS EXAMINATION.

I never associated with Jim. No, I aint a high-class nigger, but I am a different grade from him. He had three or four watches and I bought one and I made him show me a receipt marked paid in full, and he sold me the watch and after that they come and got him to put him in jail about it, and then his whole family came and said if I would give the watch back, that they would pay the debt, and I gave the watch back and after they had released him, the family just said they done that to get the watch and they were done with it, and there wasn't any way for me to get it, but he swore to me it was paid in full. I haven't heard anything else said against him. I never paid any special attention to the elevator during business hours, but you could hear it all the time when the factory wasn't running. It didn't shake the building. You could hear the elevator when the wind blows. You could hear the elevator if the machinery wasn't running even if they are hammering.

RE-DIRECT EXAMINATION.

I haven't missed a single day in five years, that I have been working with the factory. Yes, I say that Jim Conley forged a receipt on me for a watch. I let him have $4.50 on it, and I never got my money back.

DAISY HOPKINS, sworn for the Defendant.

I am a married woman. I worked in the factory from October, 1911, to June 1, 1912. I worked in the packing department on the second floor. Mr. Frank never spoke to me when he would pass. I never did speak to him. I've never been in his office drinking beer, coca-cola, or anything else. I know Dalton when I see him. I never visited the factory with him. I never have been with him until I went to his house to see Mrs. Taylor, who lived with him then. That was the only place I have ever seen him. I never have been to the factory on Saturday or any other day. I never in-

troduced him to Mr. Frank. There isn't a word of truth in that. I have never gone down in the basement with this fellow Dalton. I don't even know where the basement is at all. I have never been anywhere in the factory, except at my work.

CROSS EXAMINATION.

I have never been in jail. Mr. W. M. Smith got me out of jail. Somebody told a tale on me, that's why I was put in jail. I don't know what they charged me with; they accused me of fornication.

RE-DIRECT EXAMINATION.

I never was tried. I never had to pay anything except my lawyer's fee, which I paid to Mr. Wm. Smith. I never was taken to court.

MISS LAURA ATKINSON, sworn for the Defendant.

I have been in Mr. Dalton's company three times. I never met him at the Busy Bee Cafe. I have never walked with him to or from the pencil company. I have never walked home with him.

CROSS EXAMINATION.

I worked at the National Pencil Factory two days last month. I have known Mr. Dalton six months. I have been in his company three times. I did not know Daisy Hopkins.

MRS. MINNIE SMITH, sworn for the Defendant.

I work at the pencil factory. I do not know C. B. Dalton. I live at 148 S. Forsyth St. I have never met Dalton or walked home with him. I don't know the man. I know Mr. Frank. I have spoken to him six times in the four years and a half that I worked there.

CROSS EXAMINATION WAIVED.

V. S. Cooper, W. T. Mitchell, O. A. Nix, Samuel Craig, B. L. Patterson, Robert Craig, Ed Craig, T. L. Ambrose, J. P. Bird, J. H. Patrick and I. M. Hamilton. All sworn for the defendant. Testified that they lived in Gwinnett or Walton county; that they used to know C. B. Walton before he left Monroe in Walton county; that his general character for truth and veracity is bad, and that they would not believe him on oath.

R. L. BAUER, sworn for the Defendant.

During the summer of 1909 and 1910, I worked at the National Pencil Company on Saturdays. Since that time I have worked off and on at the factory on Saturdays doing extra work. I have also been up to the office

Saturday afternoons, frequently during the past twelve months. I was there while Mr. Schiff was off on his trip. I was up at the office on the Saturday afternoon before Mr. Schiff went away. Mr. Holloway, Mr. Schiff, Mr. Frank and the office boy were there. I have never seen any women in Mr. Frank's office on the Saturdays I have been there.

CROSS EXAMINATION.

I have always found Mr. Schiff there on Saturday afternoons with the exception of the time when he was off on his trip during January and February. The only specific Saturday afternoons that I remember being at the factory, was the Saturdays during the month of January, 1913, when Mr. Schiff was off on the road. Got to the factory at three o'clock on the first Saturday in January. I went through the front door of the factory. It was unlocked and the door was open. Mr. Holloway was on the second floor in his usual place. Mr. Frank was in his office sitting at his desk. I didn't see any stenographer. I stayed there until nearly four o'clock. I have been to the factory on an average of two Saturdays every month. On the second Saturday in January, I got to the factory at three o'clock. Mr. Frank, Mr. Holloway and the office boy were there. The front door was open. The inside door was open. Mr. Frank was at his desk, in the inside office. I stayed there about a half or three quarters of an hour, about half past three or a quarter to four. I talked to Mr. Frank about ten minutes, and the rest of the time I just noticed things around the office. I saw Mr. Frank at the factory the third Saturday in January I was there. I don't know who else was there. I went to inquire about Mr. Schiff who was in the Ohio flood. Mr. Frank was in his office. I remember seeing Mr. Frank in his office on the fourth Saturday in January I called there. He was working in his office. I don't remember seeing anybody else there.

GORDON BAILEY, sworn for the Defendant.

I wo k at the factory. I am sometimes called "Snowball." I never saw Jim Conley talk to Mr. Frank the Friday before the murder. I have never, at any time, heard Mr. Frank ask Conley to come back on any Saturday. I have never seen Mr. Frank bring in any women into the factory. I have never seen Jim Conley guarding or watching the door. I have seen Jim take newspapers and look at it, but I don't know if he read them or not. I have seen him have papers at the station house like he was reading them.

CROSS EXAMINATION.

I was arrested Monday, April 28th, about half past nine. I saw Mr. Frank before I was arrested. He was on the second floor.

HENRY SMITH, sworn for the Defendant.

I work at the pencil factory in the metal department. I work with Barrett. He has talked to me about the reward offered in this case. He said it was $4,300, and he thought if anybody was to get it, he was to get it, because he found the blood and hair, and he said he ought to get the first hook at it. He said it six or seven different times.

CROSS EXAMINATION.

He would come out of the room counting it off on his hands. He did that two or three times and sort of laughed, counting that imaginary money.

MILTON KLEIN, sworn for the Defendant.

I saw Mr. Frank last Thanksgiving evening at a dance given by the B'nai B'rith at the Hebrew Orphan's Home. I also saw him that same afternoon between half past four and six o'clock. The dance lasted from eight to half past eleven. Mr. Frank helped Mr. Copelan and myself give the dance. We were the committee in charge.

CROSS EXAMINATION.

I was down at the jail to see Mr. Frank when the detectives brought Conley down there. I sent word down that Mr. Frank didn't care to see Conley, that he didn't care to see anyone at that time. He knew that Conley was there. I was the spokesman for Mr. Frank. He wouldn't see any of the detectives either. Mr. Frank said that he would see Conley only with the consent of his attorney, Mr. Rosser. He said for them to send and get Mr. Rosser. Frank's manner was perfectly natural. He considered Conley in the same light that he considered any of the city detectives. He said he would not see any of the city detectives, or Mr. Scott without the consent of Mr. Rosser. He considered Scott as working for the city. He included Scott with the rest of the detectives. Mr. Frank looked very much disappointed because the grand jury had just indicted him when he had expected to be cleared. Mr. Frank has a great many friends who constantly visited him in jail.

NATHAN COPLAN, sworn for the Defendant.

I remember last Thanksgiving Day was a very disagreeable day. I don't remember whether it snowed. The B'nai B'rith is a charitable organization here composed of young men. They gave a dance out at the Jewish Orphans Home Thanksgiving evening. Mr. Frank had charge of it. Mr. Frank and his wife were there. I got there about eight o'clock. They were there at that time. They stayed there until about ten o'clock.

JOE STELKER, sworn for the Defendant.

I have got charge of the varnishing department at the pencil factory; about sixty people work under me. I saw the spot that Mr. Barrett claimed he had found in front of the young ladies dressing room. It looked like some one had some coloring in a bottle and splashed it on the floor. Chief Beavers asked me to find out whether it was varnish or not. I saw the white stuff on it. It looked like a composition they use on the eyelet machine or face powder. They carry that stuff around in buckets in the metal room. It gets spilled on the floor and looks something like face powder. The spots look like some varnish. The floor in the metal room is swept once a week. It is never washed. The spots look as if it had been made three days before. I would not have noticed it had not my attention been called to it. The floor is a greasy one. The white stuff looked like it come from the eyelet machine. The alleged blood spots could have been made with a transparent red varnish. If it is that kind of varnish it will soak in and look something like blood. If it is pigment it will show up right red. They use this kind of varnish in bottles in the metal room. I tried a stain on the floor there and it looked just like that spot that Barrett found. Everybody was nervous and shaky on Monday. The varnish I experimented with soaked in the floor and looked the same as the blood spot. I have seen paint all over the floor, it splashes out of the bucket and they just sweep it up. I was at the undertaker's Sunday afternoon at two o'clock when Frank was there. Mr. Quinn, Mr. Ziganke, Mr. Darley and Mr. Schiff were there. I looked at the body with Mr. Ziganke. No one else was present. I have known Jim Conley about two years. His general character for truth and veracity is very bad, therefore, I would not believe him on oath.

CROSS EXAMINATION.

Frank came from Brooklyn. I am no kin to Mr. Frank or any of his people. I do not belong to his society. I have never heard anything said against Conley, except since Frank was indicted. I also heard he was in the chaingang. I saw him in the chaingang on Forsyth Street. I saw him with shackles on. I don't know what he was sent up for. I sent him out for 25 cents worth of beer and he filled it half full of water and he denied doing it. I could tell it was filled up by the taste of it. I know he did it because he had a suspicious look about him. That was last summer. Ziganke helped me drink beer. That's about all the drinking I have ever seen there. At the undertaker's Mr. Frank had on a dark suit of clothes. He had no raincoat with him. We went to the undertaker's for the purpose of seeing the body. Mr. Frank did not ask me to meet him there. I went in to view the body and then came out. Mr. Frank came there ten minutes after we got there. While we were in there Mr. Frank had come and was speaking to Mr. Darley. I don't know how long I was sitting there. I was too nervous to know. I felt nauseated and nervous before I went in to see the body. When I went

in to view the body Mr. Frank was standing outside talking with Mr. Schiff and Mr. Darley. Mr. Frank went in to view the body later on, ten or twenty or thirty minutes later. I was sitting down waiting for the rest of the men while he went there. Ziganke was sitting with me. I don't know whether Mr. Frank went in the room to see the body or not. Mr. Frank was nervous when he got there, and when he came out just the same. Just the same expression he has got on his face now. The room was full of people when Mr. Frank went in there. I went down to the undertaker's to see who was murdered. I did not know that she had already been identified as Mary Phagan. I only heard when I got to the undertaker's. I didn't see the impress of the cord on the neck. I just took one look and then came right out again. I saw the discoloration of the eye and that bruise and I sort of felt sick and I walked right out.

RE-DIRECT EXAMINATION.

I am a German and I am accustomed to drinking my beer. I have never trusted Jim Conley after he put water in my beer.

HARLEE BRANCH, sworn for the Defendant,

I work for the Atlanta Journal. I had an interview with Jim Conley on two occasions. On May 31, he told me he didn't see the purse of this little girl. He said that it took about thirty-five minutes after going upstairs until he got out of the factory. He said he finished about 1:30 and then went out. He said that Lemmie Quinn got into the factory about 12 o'clock and remained about 8 or 9 minutes.

CROSS EXAMINATION.

I am sure about his saying he saw Lemmie Quinn at the factory at that interview. He was in jail when I had that interview. It was a few days after he went through the factory. As to Conley's movements at the factory, I was there a few minutes after twelve. Conley arrived there about 12:10 or 12:15. The detectives told him what he was there for. After a few minutes brief conversation, Conley started telling his story. When he reached the point at the rear left side of the factory, he described the position of the body, and described what he did with the body, and how Mr. Frank helped him. He enacted the whole story and talking all the time. After he had reached the point of disposing of the body, and writing the notes, I found it was time for me to go back to the office and I left. Conley began the enactment of the story a few minutes after he got there, which was a quarter past twelve, and he went through very rapidly. We had to sort of trot to keep behind him. I left the factory at 1:10. In estimating the time Conley dedevoted to acting and how much to telling the story would be a guess. There is no way of disassociating the time between the two. I didn't attempt to do that. It would be a pure guess because I see no way of dividing the time. I

should say that perhaps he was talking and not acting for about fifteen minutes. Of course he was talking all the time that he was acting. I did not say that I thought he was talking half of the time.

RE-DIRECT EXAMINATION.

In going through his performance he walked very rapidly. We were almost on a trot behind him. I was at the factory fifty minutes while he enacted his story. I left him after he had written one note in Mr. Frank's office. He wrote the note very rapidly. It took him about two minutes. He didn't stay in the wardrobe over a minute. He just got in, closed the door and got right out. In approximating the time of his performance I gave a minute to his staying in the wardrobe and two minutes to writing the one note. If you add six minutes to writing the other notes and eight minutes to the time he said he stayed in the wardrobe, that would be fourteen minutes added to the fifty minutes, which would be sixty-four minutes for the time of the performance. If you deduct the fifteen minutes which I say he was talking, would leave forty minutes net which he took to enact the story.

RE-CROSS EXAMINATION.

That is just an estimate. The only time I had was the time I left my office and the time I got back. Conley got to the factory 12:15 and I left there between 1:05 and 1:10. I saw Conley pick up a paper in the newspaper room and he looked like he was reading it. It had pictures on the front page and I judge he looked at them first, because afterwards he folded it. He had several minutes while I was telephoning.

JOHN M. MINAR, sworn for the Defendant.

I am a newspaper reporter for the "Atlanta Georgian." I visited George Epps Sunday night, April 27th. I went there to ask him and his sister when was the last time either of them had seen Mary Phagan. George Epps and sister were both present. I asked them who had seen Mary Phagan last, and the little girl Epps said she had seen her on the previous Thursday. George Epps was standing right there and he said nothing about having seen her Thursday. He said he knew the girl, that he had ridden to town with her in the mornings occasionally when she went to work. He said nothing as to having seen the girl on Saturday and coming in on the car with her. I directed my questions to both the children.

CROSS EXAMINATION.

I was not seeking evidence for the defendant. There was no defendant at that time. This was on Sunday, the day the body was found. I have been working under the direction of Mr. Clofein, city editor. Clofein visited Frank in jail. At that time Mr. Frank had not been mentioned in connection with

the case at all. At the time of the interview with the little girl and the little boy they were both in the room with their father. Their father took me out there.

W. D. McWORTH, sworn for the Defendant.

I am a Pinkerton detective. I worked for fifteen days on the Frank case. For three days I took statements from the factory employees and on May 15th, I made a thorough search of the ground floor. I found near the front door on the ground floor, stains that might or might not have been blood. All the radiators in the factory had trash, dirt and rubbish behind them. Behind one of the radiators near the Clark Woodenware place, where the partition is, I found much trash, behind the trap door, up against the partition, and on top of the radiator were pipes and about eight or nine lengths of that rope that they tie pencils with. One length—the only one that came loose—was pulled straight away from the radiator and I saw signs of it having been cut recently with a sharp knife. Among the trash I found papers there dated February, 1911. That rubbish had been there some time, because the rest of the floor around there was clean. About six or eight inches from the left side of the radiator, there was a small pile of dirt and sweepings. When I took Mr. Whitfield, another Pinkerton detective, back there to show him the spots I had found, we looked behind the radiator and as I was sticking my hand around the dust and dirt, I discovered a pay envelope. (Defendant's exhibit 47). It was covered with granulated dust. I opened it and looked at it and saw the number 186 there. And the first initials of the name an "M" and a "P." I handed it to Whitfield and said: "Take it to the door and see what it is." It was pretty dark in there. Right in the same corner, I also found a club (defendant's exhibit 48). It was standing up on the doorway with some iron pipes. The club is used by the drayman as a roller to roll boxes and barrels on. The iron pipes there were used for the same purpose. The stains on the club were either paint or blood, I don't know which. I found this little stick back of the front door. (State's exhibit L).

CROSS EXAMINATION.

I saw the spots in front of the ladies dressing room. It just looked as if the floor had been stained. There are half a dozen places. There was no difference in appearance between the dark spots by the water cooler and the other spot in the metal room. I did not make any special search on the office floor for a pay envelope. I was looking for the mesh bag under the instructions of Mr. Scott. Mr. Whitfield joined me in the search. In my report to the Pinkertons I reported that I found what I took to be blood stains around the trap door. They were dark discolorations. There were seven of them, averaging about seven inches in diameter. The gas was turned on and I used matches in examining them. I had found the stains first and

while Mr. Whitfield and I were back there looking behind the radiator, we found the cord and twine about the radiator. Whitfield was examining the stains when I picked up the envelope which was all rolled up. I found the envelope about three o'clock on May 15, within eight or ten inches of the trap door. The name was written in lead pencil. So far as I know the envelope has not been changed any since I saw it last. I did not see any "5" on the envelope. We went out to see Mr. and Mrs. Coleman on May 17th, and showed them the envelope. There was no "5" on it at that time. There was no conversation about any five. I had talked to Mr. Schiff before I saw Mr. Coleman. In my report I stated that the stains might have been blood as well as stains. I reported the finding of this club to the police 17 hours after finding it. And within four hours thereafter, I had a conference with them about it. I never showed that whip to anybody (State's exhibit L) I didn't show it to Mr. Black. I showed him the club and the envelope. I turned them over to Mr. Pierce, the superintendent of our agency. I don't know where he is, nor Whitfield either.

JOHN FINLEY, sworn for the Defendant.

I was formerly master machinist and assistant superintendent of the pencil factory. I have known Mr. Frank about five years. His character was good.

CROSS EXAMINATION.

I am now superintendent for Dittler Bros. They are not related to the Franks. I left the pencil company about three years ago. I have never heard anything about women going up in the factory after work hours. Mr. Frank and I usually left together about six o'clock. Mr. Frank went to lunch usually about one o'clock. I would sometimes work at the factory all Saturday afternoon. I did that most of the time that I was there. The elevator box was kept closed when I was there. I generally kept one key and we kept one key in the office. The rule was to lock it and keep one key in the office. It has been left unlocked. The elevator doesn't make much noise that I know of. It doesn't shake the building; not when I was there. The wheels on the top floor are closed in on the fourth floor. You might be able to see them on the fourth floor if you stand on the west side of the elevator. They didn't make any noise. The power box don't make any noise.

RE-DIRECT EXAMINATION.

The motor makes a tremendous noise. You can hear it and the shafting anywhere in the building.

A. D. GREENFIELD, sworn for the Defendant.

I am one of the owners of the building occupied by the Pencil Company on Forsyth St. I have owned it since 1900. When we bought the building

it was occupied by Montag Bros. They used it as a manufacturing plant. The Clarke Woodenware Company subleased part of the first floor from Montag Bros. They used the front door on Montag Bros. in going in there. We have not put in any new floor on the second story of the building. I have known Mr. Frank four or five years. His character is good.

CROSS EXAMINATION.

I have come in contact with Mr. Frank in business and I have heard my associates talk about him. I have seen him twenty or thirty times during the past five years. I have not contributed anything to any fund for his defense. I have not heard of any such fund.

DR. WM. OWENS, sworn for the Defendant.

I am a physician. I am also engaged in the real estate business. At the request of the defense I went through certain experiments in the pencil factory to ascertain how long it would take to go through Jim Conley's movements relative to moving the body of Mary Phagan. I kept the time while the other men were going through with the performance. I followed them and kept the time. Mr. Wilson of the Atlanta Baggage Co. also kept time with me. Mr. Brent and Mr. Fleming enacted the performance. The performance enacted was as follows: "12.56 o'clock, Conley goes to cotton box from elevator stairs, gets piece of cloth, takes cloth back to where body lay and ties it just like a person that was going to give out clothes on Monday, ties each corner, draws it in and ties it, ties the four corners together, and runs right arm through cloth, went to put it up on his shoulder and found he couldn't get it up on shoulder, it was too heavy, and he carried it that way on his arm, when close to little dressing room in the metal department, he let the body fall; he jumped, and he was scared and said: "Mr. Frank, you will have to help me with this girl, she is heavy;" Frank comes and runs down from the top of the steps, and after he comes down there he caught her by the feet, and Conley laid hold of her by the shoulders, and when they got her up that way, they backed, and Frank kind of put her on Conley, Frank was nervous and trembling, too, and after walking a few steps, Frank let her feet drop; then they picked her up and went to the elevator and sat her on the elevator, and Frank pulled down the cords, and the elevator wouldn't go, and Frank said: "Wait, let me go in the office and get the key;" and Frank goes in the office and gets a key and comes back and unlocks the storage box, and after that he started the elevator down; the elevator went down to the basement, and Frank said, "Come on," and he opened the door that led direct to the basement in front of the elevator, and carried it out and laid her down, and Conley opened the cloth and rolled her out on the floor, and Frank turned around and went on up the ladder, and Conley carries the body back to where the body was found; Conley goes around in front of the boiler, and notices her hat and slipper and a piece of ribbon; and Conley said: "Mr.

Frank, /what am I going to do with these things?'' and Mr. Frank said: ''Leave them right there;'' and Conley threw them in front of the boiler; Conley goes to the elevator, and Frank come on up and stepped off at the first floor, and Frank hits Conley a blow on the chest which run him against the elevator; Frank stumbles out of elevator as it nears second floor, Frank goes and washes his hands, and comes into the private office, and they sit down in the private office, Frank rubbing his hands on the back of his hair; Frank happened to look out of the door, and said: ''My God, there is Emma Clarke and Corinthia Hall;'' Frank runs back; Frank says: ''Come over here, Jim. I have got to put you in this wardrobe;'' Frank puts Conley in wardrobe; Conley stayed there quite a while; Frank: ''You got in a tight place;'' Conley: ''Yes, sir;'' Frank: ''You did very well;'' Frank goes in the hall and comes back and lets Conley out of the wardrobe; Frank made him sit down; Conley sits down; Frank reaches on table and gets a box of cigarettes and matches, takes out cigarette and match, and hands Conley box of cigarettes; Conley lights cigarette, and commenced smoking, and hands Frank back box of cigarettes, Frank puts cigarettes back in his pocket and takes it out; Frank: ''You can have these;'' Conley reaches over and takes box of cigarettes and sticks them in his pocket; Frank: ''Can you write?'' Conley: ''Yes, sir, a little bit;'' Frank takes out his pencil and sits down; Conley sits down at table; Frank dictates notes, Conley taking paper that Frank gave him; Conley writes one note; Frank says, ''Turn over and write again;'' Conley turns over paper and writes again; Frank: ''Turn over again;'' Conley turned over again and writes on next page; Frank: ''That is all right.'' Frank reaches over and gets green piece of paper and tells Conley what to write; Conley writes, Frank then lays it on his desk, looks at Conley smiling and rubbing his hands, runs his hands in his pocket and pulls out a roll of bills; Frank says: ''There is $200.00.'' Conley takes the money and looks at it a little bit; Conley: ''Mr. Frank, don't you pay another dollar when that watchman comes, I'll pay him myself.'' Frank: ''All right, I don't see what you want a watch for, either; that big fat wife of mine, she wanted me to buy her an automobile, and I wouldn't do it; (pause) I will tell you the best way. You go down in the basement; you saw that package that is on the floor in front of the elevator; take a lot of that trash and make up a fire and burn it.'' Conley: ''All right, Mr. Frank, you come down with me and I will go.'' Frank: ''There is no need of my going down there, and I haven't got any business down there.'' Conley: ''Mr. Frank, you are a white man and you done it, and I am not going down there and burn it myself.'' (Pause). Frank: ''Let me see that money.'' Frank takes money and puts it in his pocket. Conley: ''Is this the way you do things?'' (Pause) Frank turned around in his chair, looks at money, and looks back at Conley, and throws his hands and looks up. Frank: ''Why should I hang, I have wealthy people in Brooklyn.'' Conley: ''Mr. Frank, what about me?'' Frank: ''It is alright about you, don't you worry about this thing; you must go back to your work on Monday, like you have never known anything, and keep your mouth shut,

if you get caught, I will get you out on bond and send you away." Conley: "That is all right, Mr. Frank." (Pause) Frank: "I am going out home; can you come back this evening and do it?" Conley: "Yes, sir, I am coming to get my money." Frank: "Well, I am going home to get my dinner now; you come back here in about forty minutes from now; it is near my dinner hour and I am going home to get my dinner;" picks up money. Conley: "How will I get in?" Frank: "There will be a place for you to get in all right, but listen, if you are not coming back, let me know, and I will take these notes and put them down with the body." Conley: "All right, I will be back in forty minutes." Conley looks at Frank, Frank looks up. Then Conley gets up and stands by chair and looks down at Frank; Frank grabs scratch pad from typewriter table and starts to make memorandum upon paper, but his hand trembles so he couldn't; Frank gets up to go. Frank: "Now, Jim, you keep your mouth shut, do you hear?" Conley: "All right, I will keep my mouth shut, and I will be back here in forty minutes." Conley goes out. It took us eighteen and a half minutes by the watch to go through the movements and conversation (as above set forth), which Conley says took place between him and Frank on Saturday, April 26th. The experiment was made as rapidly as the dialogue could be read. The eighteen and a half minutes did not include the eight minutes that Conley said he was in the wardrobe and also the time it took him to write the notes. Including the eight minutes he remained in the wardrobe and the ten minutes estimated for writing the notes, the whole performance would have taken 36 1-2 minutes.

CROSS EXAMINATION.

We started the experiment at the entrance of Mr. Frank's office at the top of the stairs. We had the copy of Conley's movements and the conversation in our hands all the time. Mr. Haas and Mr. Wilson read the directions. Mr. Brent took the part of Conley. As they would read out the things that Conley did, Mr. Brent would do them. I went with him all the time. I don't think the giving of the directions lengthened the time very much, because the directions were being given while the enactment of each scene was going on. It wasn't done slowly and deliberately. When they dropped the body, those knots did not come untied. The sack that they carried, to represent the body, contained wet sawdust and cinders, and was supposed to weigh 107 pounds. It was tied up tight. There was only one point in the enactment where there might have been a loss of time, and that was where Mr. Frank was supposed to have paused in the office, and I suppose five or ten seconds were lost there. Mr. Fleming took the part of Mr. Frank. When they took the body down on the elevator, Mr. Brent, representing Conley, opened the cloth and rolled the corpse out on the floor, on the cloth, then dragged her back to where the body was found. Mr. Brent dragged it back. He simply picked up the sack by the end and pulled it along. He dragged the sack with the enclosed sawdust weighing about 107 pounds, back.

Mr. Brent enacted everything that was supposed to have been done by Conley. Mr. Fleming played the part of Mr. Frank. Neither one of these gentlemen are connected with the pencil factory. In putting the cloth around the corpse I think they actually gained time. They did it really faster than it could have been done. Mr. Herbert Haas did most of the reading of the directions. There were no feet hanging out of the sack like the body would. As to whether it isn't much easier to handle the sack as it was than it would be to handle a human body in a sack, with the head and shoulders and arms exposed at one end and the feet and the legs up to the knees exposed at the other, I believe you could pick up a body just as quickly as you could a sack. Corpses are pretty hard to handle. Fleming acted nervous and agitated like Frank was supposed to have done. He didn't tremble. I think he gained time there. In picking her up and putting her on the elevator I think they did that fully as quickly as a person could have taken a body, probably faster. I don't think Mr. Fleming really unlocked the elevator box like Mr. Frank was supposed to do it. He went through the motion.. It probably takes longer to actually unlock it than it would to go through the motion of doing it. He probably gained time there. In going down the elevator, I think Mr. Schiff ran the elevator. He was in the building when we got there and let us in. He ran it because none of the rest of us knew how to run it. He brought us back up again in the elevator. That's the only part he took in the performance. Mr. Brent, impersonating Conley, carried the body out of the elevator. He is a large man and had no trouble carrying 107 pounds. Whatever the instructions called for we followed to the letter. Mr. Wilson and I had the paper in our hands and checked Mr. Haas as he read the directions. These directions furnished us were supposed to be Conley's testimony on the stand. It was furnished to us as a copy of the evidence as given by Conley. When we got to the basement I am not sure whether Mr. Brent impersonating Conley, carried the body or dragged it. It could be dragged as quickly as it could be carried. I had my eyes on the paper all the time. Mr. Brent didn't get in the wardrobe, he was too big. He went to wardrobe and we eliminated the time he was supposed to be there. A small man could have got in it. They did not write out the notes. We eliminated that also. Staying in the wardrobe and writing the notes was not included in the eighteen and a half minutes it took. It was said that Conley's testimony was to the effect that he was in the wardrobe eight minutes. The notes were supposed to have taken from 12 to 16 minutes to write, but we didn't add that in our estimate. Mr. Wilson and I set our watches together when the performance started. The only thing that we omitted from the entire performance was writing the notes and concealing Conley in the wardrobe. Yes, I wrote that letter. I wrote it partially at the instance of myself, and partially at the instance of Mr. Leonard Haas, my personal attorney.

RE-DIRECT EXAMINATION.

I wrote that letter as a matter of conscience. It is as follows: "To the Grand Jury of Fulton County, W. D. Beattie, foreman. Gentlemen: Among a number of people with whom I have discussed the unfortunate Phagan affair, I have found very few who now believe in the guilt of Leo M. Frank, and I have felt a deep conviction growing in my heart that a terrible injustice might be inflicted upon an innocent man. While we are all still mystified by the published evidence now at command, I am impelled by a sense of duty to ask that you carefully weigh the testimony of all persons connected with the crime, and the accumulating evidence, and if further indictments are warranted, that the Honorable Body, of which you are the foreman, will not hesitate to find them. If I am exceeding the privilege which perhaps might be accorded citizens in thus addressing your Honorable Body, it is your privilege to ignore what I have said. Whatever may be your conclusion in the matter, I wish to assure you in thus addressing you, that I am discharging a duty which has weighed heavily on my conscience, the performance of which I could not forego. I do not even know Mr. Frank, and have no personal interest in the case whatever. Very truly, your fellow-citizen, William Owens." The pantomine that we enacted at the factory was the story as told by Jim Conley on the stand.

ISAAC HAAS, sworn for the Defendant.

I know Leo M. Frank for over five years. His character is very good. I did not hear my telephone ring on Sunday morning, April 27th. My wife heard it. The telephone is twenty-two feet from my bed.

CROSS EXAMINATION.

My wife waked me up when she answered the telephone.

A. N. ANDERSON, sworn for the Defendant.

I work at the Atlanta National Bank. That is the original pass-book of Leo M. Frank (Defendant's exhibit 50).

CROSS EXAMINATION.

I don't know that that's the only bank account that he had. He may have had others. Yes, the pencil company does business with the Atlanta National Bank. I don't know anything about how much money they had on April 26. Mr. Frank's bank book was balanced August 11. These are all the checks that he drew (defendant's exhibit 51) during April.

RE-DIRECT EXAMINATION.

These cancelled checks are the ones that have been paid since April 1, 1913. Mr. Frank had drawn no others since then.

RE-CROSS EXAMINATION.

On the first of April he had $111.13, on the 18th of April he deposited $15.00. That is all he deposited that month, and these checks were drawn against that $111.13 and $15.00.

R. P. BUTLER, sworn for the Defendant.

I am the shipping clerk of the pencil company. I am familiar with the doors leading into the metal room. They are wooden doors, with glass windows. There is no trouble looking through those windows into the metal room, even when the doors are closed. The glass in the door is about fifteen inches by eighteen inches. Any one of ordinary height can see through them easily.

CROSS EXAMINATION.

The doors are six feet wide together. The passageway from the elevator back to the metal room is ten feet wide with the exception of that part where we have some boxes piled up, where it is about six feet wide. The boxes go to the ceiling on the one side. It is not particularly dark there. I measured the width of the metal room doors. They were six feet wide exactly from jamb to jamb. The doors are usually open. If any one came up the stair case and turned to the office, they could see through the metal room doors. The floors of the metal room are very dirty. I don't know if the windows are clean, but you can see through them.

I. U. KAUFFMAN, sworn for the Defendant.

I made a drawing of the Selig residence on Georgia Avenue, in this city, showing the kitchen, dining room, the reception room, parlor and passageway between the kitchen and dining room. The mirror in the dining room is in the sideboard as shown on the plat (defendant's exhibit 52). It is fourteen feet from the kitchen door to the passageway in the dining room and the passageway is a little over two feet. Standing in the back door of the kitchen room against the north side of the door, I could not see that mirror, because of the partition between the passageway and the dining room. On the south side of the kitchen door you would have less view than on the north side and could not see the sideboard wherein the mirror is located at all. It is 175 feet from the Selig home to the corner of Washington and Georgia Avenue and 271 feet from the Selig home to corner of Pulliam St. and Georgia Avenue, as shown on the plat (Defendant's exhibit 53). I made a plat of the National Pencil company plant on Forsyth St. (Defendant's exhibit 61). The page one of this plat is the basement. Page two is the first floor; the dimensions of the elevator shaft are six by eight and back of the trap door, as shown on the plat, is a ladder going to the basement. The size of the trap door is 2 feet by 2 feet and 3 inches. It is 136 feet from the elevator

shaft to the place where the body of the young lady is said to have been found, and 80 feet from the front of the elevator shaft to the trash pile and 90 feet from the elevator shaft to the boiler, and 116 feet from the elevator shaft to the colored people's toilet. It is 135 feet from the elevator to the back stairway. The chute as shown on the page 2 of the plat is five feet wide and 15 or 20 feet long. It empties upon a platform in the basement about eight or ten feet from the back steps and about 32 feet from where the body is said to have been found. The back door is 165 feet from the elevator and the total length is 200 feet. I saw no furniture, except a bunk with old dirty sacks, which were very filthy. The floor of the basement is dirt and ashes. The trash pile is 57 feet from where the body was found and it is 21 feet from where the body was found to the colored toilet, and 42 feet from where the body was found to the back door. The angle from the colored toilet to where the body was found is 43 degrees and the partition in the basement cuts off the vision. I should say that it would cut off about half of the body. It is very dark in the basement. These diagrams are accurate, made according to accurate instruments. On the first floor there is an open areaway, extending to the west end of the building. It has a door about five feet wide. There are two toilets in this open areaway, about 90 feet from the front. This part of the first floor is directly above where the young lady's body was found. The size of the packing room is shown on page 2 of the plat, is about 33 by 80. The inner office of Mr. Frank is 12 1-2 by 17 1-2. When the safe is open, you can see nothing from the inner office to the outer office, or the outer office into the inner office, unless you stand up, and the safe is about 4 1-2 feet high. A person five feet and 2 inches tall could not see over the safe. There are no shades in the windows and a person on the opposite side of the street could look into the office. It is 150 feet from Mr. Frank's desk to the dressing room. There is no view from Mr. Frank's desk to the stairway to the first floor. Looking from Mr. Frank's desk towards the clocks you can see about one fourth of the east clock. You can not see the bottom of the stairway which leads from the second to the third floor. The doorways in the metal rooms are about six feet wide. They have glass in them. It is ten feet from the door to this dressing room. It is 26 feet from the dressing room to the place marked "lathe," and 37 feet from the lathe to the point where Conley said he found the body. It is 19 feet from the place where Conley found the body to the ladies' toilet.

CROSS EXAMINATION.

There are ashes and cinders along the walk in the basement. Mr. Schiff showed me the point where the body was found. I made every calculation from the point that Mr. Schiff showed me. I made my diagrams within the last month. About two feet of the wall prevents seeing from the desk in Mr. Frank's office to the stairway. You can only see a part of the east clock and doesn't take in the west clock at all.

RE-DIRECT EXAMINATION.

There will be no difficulty about one person going down the scuttle hole back of the elevator.

RE-CROSS EXAMINATION.

If the Washington St. car had passed the nearest corner, it would be at Pulliam and Georgia Avenue.

FURTHER EXAMINATION.

Sitting near the back door, he could not see the mirror.

FURTHER EXAMINATION.

I do not know what the arrangement was in the Selig home on April 26.

J. Q. ADAMS, sworn for the Defendant.

I am a photographer. I took photographs of the Selig home at 68 E. Georgia Avenue from the inside and the outside of the back door, looking toward the passageway that leads in the dining room. The door into the dining room was open, for me. This view (Exhibit 62) is view made from the outside of the rear door. I was about three feet outside of the door. The picture does not extend to the mirror, or the sideboard. You could not see them from the outside. This (Exhibit 63 for defendant) is a photograph taken standing directly in the door. You could not see the mirror with the naked eye or in the picture. The following are views taken at the pencil factory: (Defendant's exhibit 64) is a picture of the safe, showing a view of the safe, standing just inside of the door of the office, looking toward the inner office. Defendant's exhibit 65 is another view of the safe and office made standing in door. You could not see any part of Mr. Frank's desk in inner office, or a man sitting at desk, or a telephone or a window. Defendant's exhibit 66 is a photograph taken on the outside of the outer office, looking toward the inner office, with the safe door open. You could not see into the inner office, to Mr. Frank's desk, or a man sitting there. Exhibit 67 for defendant shows the pay window. Defendant's exhibit 68 shows foot of the elevator shaft, showing the rubbish and barrels in and adjacent to the elevator shaft. Defendant's exhibit 69 shows the basement looking to the back door to the elevator shafe. Defendant's exhibit 70 represents the corner of the place where the body was found, the body being found just about the left corner, behind the partition. Defendant's exhibit 71 shows the exit to ~~the back door of basement. Defendant's exhibit 72 shows~~ the entrance on the street floor. The elevator is behind the partition on the right of this photograph. Defendant's exhibit 73 shows the elevator and trap door and stairway on the first or street floor. Defendant's exhibit 74 shows the place where Conley says he found the body. The defendant's exhibit 75

shows the place where the cotton sacks were kept. Defendant's exhibit 76 is a view of the plating room. Defendant's exhibit 77 is a view of the metal room showing where the floor was chipped by the detectives in front of the dressing room. On the left is the ladies dressing room. Defendant's exhibit 78 shows the lathe. Defendant's exhibit 79 shows a view from the third floor looking to the second floor. You can see a man walking from the metal room towards the elevator, just as is shown in this picture. Defendant's exhibit 80 shows the elevator box on the second floor. Defendant's exhibit 81 shows the wheels at the top of the fourth floor. Defendant's exhibits 82 and 83 show views of the metal room. Defendant's exhibit 84 shows the doors of the metal room. These doors have glass in them. They do not lock. You can push them together, but the locks do not match. Defendant's exhibits 85 and 86 show the metal closet with the door open and closed. All these photographs are fair representations and are as accurate as a photograph can be. I have had 20 years' experience. A slight change in the mirror would have made the corner of it visible and would have thrown part of the room in view.

CROSS EXAMINATION.

The mirror could be turned so as to see a reflection in the hall. These photographs were made about a month ago. Sitting in the back door you could not see very near the mirror at the Selig residence.

T. H. WILLET, sworn for the Defendant.

I am a pattern maker. I made the pattern of Pencil Factory from a blue print. This is the model (Exhibit 13 for defendant).

CROSS EXAMINATION.

The height of the floors is not made according to scale. The floor plan is a correct representation, according to the blue print. The windows in Mr. Frank's office were not put in by me.

RE-DIRECT EXAMINATION.

I was given no instructions except to follow the ground floor plan as shown on the blue print. This is the blue print (defendant's exhibit 87), from which I made the model.

C. W. BERNHARDT, sworn for the Defendant.

I am a contractor and builder. This (defendant's exhibit 52) fairly represents the back porch of the Selig home, as well as the first floor of the house. Standing in the kitchen door you can't look through the passage way and see into the mirror. If you move up a little distance you can see about 18 inches of the mirror. You could see nobody sitting on the south

side of the table in the dining room, or on the north side of the table, in fact you can not see the table at all, or the door leading from the dining room to the sitting room. Sitting in a chair against the jamb of the kitchen door, you could not see a man in that mirror. You would have to be a foot or more inside of the door before you get any view of the mirror at all.

CROSS EXAMINATION.

Taking a point between the door and the back porch and a point about the pantry you could see about half of the mirror. The floor in the dining room showed that this furniture had been standing in the same position for some time. You could see the top of a man's head if he were sitting at the table. If the mirror were turned you might get a view. It depends on the angle of reflection. It is easy to move the furniture. The mirror is rigid in the furniture.

H. M. WOOD, sworn for the Defendant.

I am the Clerk of the Commissioners of Roads and Revenues of Fulton County. Standing in the back kitchen door of the Selig residence that enters on the back porch and undertaking to look into the dining room, I could not see the mirror in the corner of the dining room at all. Moving up into the kitchen, near the passageway, I could see nothing but the top of one chair by looking in the mirror.

CROSS EXAMINATION.

The view that I could get of the mirror would depend upon where I stood in the kitchen. I can only speak from the conditions that existed as I saw them as to the arrangement of furniture.

JULIUS A. FISCHER, sworn for the Defendant.

I am a contractor and builder. I looked at the house of the Selig's at 68 E. Georgia Avenue. Standing in the kitchen door, I had very little view of the sideboard. You could see possibly an inch in the morror. You can get no view from the mirror. The test was made sitting down and standing up. The mirror is four feet high from the floor. You could get no view of the dining room table, nor see a man sitting at the table. The mirror is fixed straight up and down. The view you get depends on the angle of the mirror. If properly adjusted you might see a man standing up.

CROSS EXAMINATION.

I had the mirror turned around, but I couldn't see anything. The mirror was too high from the floor. I don't know what the conditions were on April 26th.

J. R. LEACH, sworn for the Defendant.

I am division superintendent of the Ga. Ry. & Power Co. I know the schedule of the Georgia Avenue line and the Washington St. line. The Georgia Avenue line leaves Broad and Marietta on the hour and every ten minutes. It takes two minutes to go from Broad and Marietta to the corner of Whitehall and Alabama. It takes 12 or 13 minutes to run from Broad and Marietta to the corner of Georgia Avenue and Washington St., about ten minutes from Whitehall and Alabama to Georgia Avenue and Washington St. The Washington St. car leaves Broad and Marietta two minutes after the hour and every ten minutes. It gets to the corner of Whitehall and Alabama St. in two minutes and it takes ten minutes from Whitehall and Alabama to Washington and Georgia Avenue and ten minutes from Glenn and Washington Sts. into center of the city.

CROSS EXAMINATION.

The men come in ahead of the schedule time. I suspended a man last week for coming in ahead of time. It happens that cars come in ahead of time. You sometimes catch the men in ahead of time when they are going to be relieved. It isn't a matter of impossibility to keep the men from coming in ahead of time, but we do have it. The English Avenue line is a hard schedule. It frequently happens that the English Avenue car cuts off the River car, and the Marietta car. I have seen the English Avenue car cut off the Fair St. car, which is due at five after the hour.

K. T. THOMAS, sworn for the Defendant.

I am a civil engineer. I measured the distance from the intersection of Marietta and Forsyth St. to the pencil factory on Forsyth St. It is 1,016 feet. I walked the distance, it took me four and a half minutes. I measured the distance from the pencil factory to the intersection of Whitehall and Alabama; it is 831 feet. I walked the distance and it took me 3 1-2 minutes. I measured the distance from the pencil factory to the corner of Broad and Hunter; it is 333 feet. I walked it in a minute and three quarters. I walked at a fair rate.

CROSS EXAMINATION.

I could have walked it more rapidly and made it in three minutes. A man would have to walk slower than I walked to take him 6 minutes to go from Marietta and Forsyth to the factory.

L. M. CASTRO, sworn for the Defendant.

I walked from the corner of Marietta and Forsyth St. to the upstairs of the National Pencil Factory on S. Forsyth St. at a moderate gait. It took me

4 1-2 minutes. I walked from the same place in the pencil factory to the corner of Whitehall and Alabama Sts., and it took me three minutes and twenty seconds. I walked from the corner of Hunter and Broad Streets to the same place in the pencil factory and it took me one minute and a half.

PROF. GEO. BACHMAN, sworn for the Defendant.

Prof. of Physiology and Physiological Chemistry Atl. Col. Phys. & Surgeons. Bomar says it takes 4 hours and a half to digest cabbage. That's for the cabbage to pass from the stomach into the intestines. The gastric digestion takes 4 hours and a half. That is the time it is supposed to be in the stomach. More digestion occurs in the small intestine. The pancreatic juice helps digestion mostly in the small intestine. It consists of water in organic salts of which sodium carbonate is the most important, and a number of ferments. The ordinary time that it takes wheat bread to pass out of the stomach is not less than three hours. The time for a meal consisting of cabbage cooked for about an hour and wheat biscuit to pass out of the stomach depends a great deal upon the mastication of the food. The times given above have reference to the most favorable conditions. If the cabbage is not well chewed it would take considerably longer. It is impossible to tell exactly how long. There is no regular rules about how long such substances as cabbage and wheat bread will be found in a person's stomach. It depends upon too many different factors. Even in a healthy normal stomach the digestion might be arrested or retarded at any stage, as by strong emotion such as fear and anger or violent physical exercise, or in the state of mastication. The pyloris prevents passage of food to the intestines except when it is liquid and when there is free hydrochloric acid in the stomach. If solid food touches the pyloris it closes immediately and nothing passes for a time. If there were particles of cabbage in the stomach unmasticated in which you can see part of the leaf, they are liable to keep the contents of the stomach in it seven or eight hours or longer by coming into contact with the pyloris. The liquid contents would pass into the intestines. The solid part would be retained for a very long time. The pyloris works mechanically, and unless a chemist knows to what extent those unchewed portions have affected the pyloris he can give no reliable estimate as to how long such food has been in the stomach. It's a guess. The acid in the stomach is hydrochloric, consisting of one atom of hydrogen and one of chlorine. It combines with protein; only one per cent. of cabbage is protein, and only about one per cent. of the cabbage is acted upon in the stomach; the balance is acted upon in the small intestines, and in the mouth, where digestion begins to a certain extent. The salts in the saliva act on the starch in the cabbage. This cabbage (State's Exhibit G) I don't think has been masticated at all so far as these pieces are concerned. There can be no doubt that these pieces would retard the digestion

and the passage from the stomach into the small intestines. The presence of such cabbage would make it very uncertain as to how long before the food would pass out of the stomach. I couldn't say, and I don't think anybody could say, how long cabbage and wheat bread in such condition would stay in the stomach. As far as wheat bread and water are concerned the acidity of the stomach with reference to hydrochloric acid may go between 40 and 60 degrees, which is the average height of the acidity. With wheat bread in the same shape of biscuit it would take the acidity about an hour to reach that height. With cabbage we don't know how long it would take it to reach that height. The acidity may rise very quickly and decline slowly. It would not necessarily take it one-half of the 4 1-2 hours necessary for digestion. When the acidity reaches a certain height it begins to descend. The longer it stays in the stomach it decreases. If you find 32 degrees in the body of a corpse you cannot tell whether it is on the ascending or decreasing scale. There is no data on how long it would take the acidity to reach its height in case of cabbage. If a gallon of the juices of a corpse are taken from the body and a gallon of embalming fluid, which is 8 per cent. formalin, is put in, it would destroy the ferments in the pancreatic juices. There would be no way to tell by testing such a body whether any of that pancreatic juice had been in the lower intestine or not, for the only way to tell that is to find the action of the ferment, and if the formalin has destroyed it you can't tell anything about that at all. After formalin has been in the body it is difficult to tell how long food has been in the stomach. Formalin destroys the pepsin in the stomach. I never heard of hydrochloric acid being measured by drops before, because it is vapor. If I investigated a stomach and found wheat bread and cabbage, some of which was in that condition (State's Exhibit G) and approximately a drop and a half or two drops of combined hydrochloric acid, the stomach being taken out during a post mortem on a subject that has been interred nine of ten days, a gallon of the liquids of the body having been taken out and a gallon of embalming fluid put in it, and if I further found the acidity of the stomach to be 32 degrees and practically no pepsin, and practically nothing in the lower intestine, the body having been embalmed with formaldehyde, it would be impossible for me or any other chemist or physician to tell anything about the time it had been in the stomach. The acidity of the stomach does not suffice to show it, because it may have been higher than that. There may have been considerable free hydrochloric acid, and that may have disappeared after the body had been embalmed, or even before that some of it will combine with the walls of the body and some passes out. Not finding anything in the lower intestine would be of no value at all, because the ferments would be destroyed entirely.

CROSS EXAMINATION.

If I took the contents of an absolutely normal stomach and made a positive test and found starch there, and there was nothing to indicate that anything was stopped up, and the intestines six feet below were absolutely clear,

and nothing has moved out of the stomach, that would show me nothing as to how far digestion had progressed, for starch is found in the stomach from the beginning of digestion until the last particle of bread has passed out of the stomach and that may be three or four hours. Medical men are able to compile tables showing how long it takes to digest cabbage and other things by testing for protein, but not for starch, because proteins are the only substances which combine with the hydrochloric acid and which are digested in the stomach, and that can be done only within certain limits and not with mathematical certainty. If the starch digestion is not interrupted, maltose would be found in the stomach, but if I made a test and found starch, but no maltose, I could express no opinion unless the food had been well masticated, and unless I knew how soon after the food entered the stomach that free hydrochloric acid appeared, because free hydrochloric acid stops the starch digestion. Finding starch and no maltose would not necessarily mean that digestion had not progressed very far, because free hydrochloric acid may have appeared soon after the food entered the stomach and stopped starch digestion. In the average case I would say the starch had not been in the stomach very long. In an ordinary normal stomach you might find maltose before the food reaches the stomach, even in the mouth. It depends on mastication. If I did not find it in the mouth or stomach I could not say how long digestion had progressed. If I was told that these samples (State's Exhibit G) were taken from a normal stomach within from 40 to 60 minutes after they were taken in it, I would answer that they might have been in the stomach 7 or 8 hours. When it is said in the books that it takes four hours to digest cabbage it means cabbage which has been well chewed, not cabbage of that kind. (State's Exhibit G.)

RE-DIRECT EXAMINATION.

Cabbage, like this (State's Exhibit G) could pass from the body whole. Before it could be told with any degree of certainty how long after eating a meal of bread and cabbage 32 degrees of hydrochloric acid would be found, numerous observations would have to be made.

DR. THOMAS HANCOCK, sworn for the Defendant.

A doctor for 22 years. Engaged in hospital work 6 or 7 years. Have treated about 14,000 cases of surgery. Have examined the private parts of Leo M. Frank and found nothing abnormal. As far as my examination disclosed he is a normal man sexually. If a body is embalmed about 8 or 10 or 12 hours after death, a gallon of the liquids of the body removed, a gallon of embalming fluid, containing 8 per cent. formaldehyde is injected, the body buried and a post mortem examination made at the end of 9 or 10 days, and the doctor finds back of the ear a cut which is opened and which extends to the skull about an inch and a half long and finds on the inside of the skull no actual break of the skull, but a slight hemorrhage under the skull corresponding to the point where the blow had been delivered and there is no inter-

ference with the brain or any pressure on the brain, no doctor could tell that long after death whether or not the wound would have produced unconsciousness, because the skull may be broken and considerable hemorrhage and depression occur without any loss of memory even. There is no outside physical indication of any sort that a man could find that can tell whether it produced unconsciousness or not. If the body was found 8 or 10 or 12 hours after death with that wound and some blood appears to have flowed out of the wound, that wound could have been inflicted before or after death, the blood might flow from a wound inflicted after death from one to six or eight or ten hours by gravity. If the wound was made during life by a sharp instrument I would expect it to bleed. A live body bleeds more than a corpse. If under the above conditions only a visual examination of the lungs was made and no congestion was found, it could not be stated with certainty whether or not the person died from strangulation. If in such a subject I removed the stomach and found in it wheat bread and cabbage partly digested like that (State's Exhibit G), and 32 degrees of acidity in the stomach and very little liquids or anything in the smaller intestine and feces some 5 or 6 feet further down, and if the stomach was taken from the body 9 days after death, after it had been embalmed with a preparation containing 8 per cent. formaldehyde, neither I nor anybody else could give an intelligent opinion of how long that cabbage and wheat bread had been in the stomach before death. The digestion of carbo-hydrates begins in the mouth. The more cabbage and wheat bread are masticated the more easily it is digested. Cabbage chewed like that (State's Exhibit G) would take longer to digest. It is liable to stay in the stomach 3, 4 or 5 hours, and longer if it is stopped up by the pyloris, and when food is not chewed thoroughly, it causes irritation and constriction, and so the stomach would retain the food longer. Sometimes cabbage passes out of the body whole. No dependable opinion could be given as to the time that cabbage had been in the stomach from the conditions of acidity or lack of acidity, starch or the lack of starch, maltose or the lack of maltose. The conditions are too variable. A great many things retard digestion, such as excitement, anger and grief. Formaldehyde stops all fermented processes of the pancreatic juices, and after a body was embalmed with it I would not expect to find the pancreatic juices. It also destroys the pepsin, so that 10 days after death in the case of a body embalmed with formaldehyde no accurate opinion could be given as to how long the cabbage (State's Exhibit G) had been in the stomach. Each stomach is a law unto itself. Cooked cabbage is more difficult to digest than raw cabbage. I recently made tests with one man and four women with normal stomachs, giving them cabbage and wheat bread, and removing it from the stomach a little later to determine how the contents of the stomach looked. The first woman, age 22 (Defendant's Exhibit 88A) ate loaf bread and cabbage, chewed it well and vomited it 60 minutes later. She ate it at 12 o'clock approximately. ~~It took her~~ 9 minutes to chew it. None of them were supposed to have eaten anything since 6:30 o'clock that morning, but she had drunk some chocolate milk at 9:30, and

that gives this specimen the chocolate brown color. The next one (Defendant's Exhibit 88B) has in it the hot water and the entire vomit and embalming fluid added to it, that is formaldehyde. This cabbage was not well chewed, and looks like it did before it was eaten. She ate it at 5 minutes after 12, and it stayed in her stomach 45 minutes. The next one (Defendant's Exhibit 88D) was a man 25 years old. He did not chew his well. He ate it in 5 minutes. I took it from his stomach 1 hour and 15 minutes later. It was not digested. This next one (Defendant's Exhibit 88C) was a woman, aged 21. She chewed it well, and held it from 30 to 45 minutes. There seems to be something like tomatoes in it which she ate at 6:30 that morning. This last one (Defendant's Exhibit 88E) was a woman, aged 25. She ate cabbage and bread. She did not chew it well, and kept it 2 hours and 28 minutes. You can see cabbage in there. No dependable opinion resulting from the condition of the contents of the stomach irrespective of acidity or the other chemical qualities as to how long cabbage and wheat bread were in the stomach can be given where particles like that (State's Exhibit G) are found. Where a young lady 13 or 14 years old died, her body is embalmed as above described, and a post mortem performed 9 or 10 days after death, and the physician finds epithelium detached from the walls of the vagina in several places, nothing being visible to the naked eye and he takes several parts of the wall of the vagina away and examines them with a microscope and discovers that the blood vessels are congested, that is, there has been a hemorrhage in a number of instances, the blood from those microscopic vessels getting into tissues, the removal of the epithelium could be accounted for by the fact that there has been a digital examination the day after death by inserting the fingers, but in that length of time I would expect the epithelium to shed off. Finding the epithelium missing in several places or separated from the wall of the vagina would not indicate any violence done to the subjects in life. The condition of the blood vessels above described I would expect to result from other causes than violence. The embalming might force the blood through the small capillaries. If the subject had just had her menstrual period and that had come back on her at about the time of death or before, that would account for those distended blood vessels and hemorrhage; but even if violence caused them, you could not tell how long before death that violence had been inflicted, or that it had been inflicted within from 5 to 15 minutes before death. Death by strangulation might have an effect on those blood vessels. If there was no more damage than what I have described I would say certainly there was no violence on the young woman. A bruise or discoloration could be produced on the eye or face any time before the blood coagulated utterly, which may be as long as 8 or 10 or 12 hours after death. A blow on the back of the dead can discolor the eye. Death can be produced by a blow on the outside of the head by concussion without any appreciable lesion on the outside of the head.

DR. WILLIS F. WESTMORELAND, sworn for the Defendant.

DIRECT EXAMINATION.

A practicing physician for twenty eight years, general practice and surgery. A professor of surgery for twenty years, and formerly president of the State Board of Health. If the body of a girl between thirteen and fourteen years old was embalmed about ten hours after death, after taking out a gallon of fluid and putting in a gallon of embalming fluid, of which 8 per cent. is formaldehyde and the body was buried and nine or ten days after upon a post mortem examination a cut an inch and a half long cutting through to the skull in some places was found by the ear, and the skull was opened and on the inside of the skull no actual break of the skull was found, but a little hemorrhage under the skull corresponding to this point where the blow had been delivered and no pressure on the brain was caused, and no injury to the brain occurred it would be impossible to tell whether or not that would have produced unconsciousness before death. Skull may be fractured without producing unconsciousness. Death may be produced by a blow on the head that leaves very little outward signs. From looking at such a wound without any knowledge of the amount of blood lost, one could not tell whether it was inflicted before or after death. One could not tell from looking at a wound of that sort from which direction it was inflicted. [In answer to question as to whether he had any personal feeling against Dr. Harris, witness answered "No," but that he had preferred charges with State Board of Health charging Dr. Harris with professional dishonesty.] A blunt surface can produce a wound that would look like a cut. If in the case of the same patient the stomach was taken out and in it was found wheat bread and cabbage, some of the cabbage looking like that, (State's Exhibit G), and thirty-two degrees of combined hydrochloric acid and substantially nothing in the small intestine, and feces some five feet away, it would be impossible to form a reliable opinion that cabbage and bread had been in that stomach before death, on that data or any other data, that could be found by looking at the stomach nine or ten days after death. Many things retard digestion. Much depends upon the particular stomach, and its affinity for particular foods. There is a cycle of acidity and in the progress of digestion that increases, and then later it goes down. Food that is not thoroughly emulsified will remain in the stomach indefinitely. Cabbage like that (State's Exhibit G) and wheat bread might remain in the stomach until the process of digestion is complete, which ordinarily would be from three and a half to four hours. They might pass through the body undigested. A formaldehyde embalming preparation would destroy the pancreatic juices, and also the pepsin in the stomach. The probability is that some of the hydrochloric acid and maltose found upon an examination of the stomach in such a case would in no way determine how long food has been in the stomach. If upon the post-mortem above described, it was found that the epithelium had been so effected that it had been removed from the wall of the vagina in several places, and upon a micro-

scopic test of the wall of the vagina it was found that some of the small blood vessels had congested blood in them, these facts would not necessarily indicate violence of any kind during life, it being also known that there had been a digital examination by the physician just after death and before embalming, and that the physician performing the post-mortem had removed the wall of the vagina with his hand and scissors. Any epithelium can be very easily stripped after death. The digital examination could have stripped it. So could the removal for purposes of post-mortem examination. If the subject had had a menstrual period a day or [redacted] before death and she was found in the act of menstruating at the time of death, this would account for the congested blood vessels, and it would also make the epithelium much easier to strip. Even if an opinion could be expressed as to violence before death, it would be impossible to say that it occurred from five to fifteen minutes before death. From an examination of the private parts of Leo M. Frank he appears to be a perfectly normal man. A black eye could be inflicted after death. As long as the blood is not coagulated. A lick on the back of the head could produce a black eye.

CROSS EXAMINATION.

There are sexual inverts who are absolutely normal in physical appearance. If I had a subject where there was a blow on the head, going practically to the skull, with no injury to the brain, and the face was livid, the tongue hanging out, with deep indentation in the neck, the flesh pushed out of place, with blue nails and lips, I would say that death was produced by strangulation, in the absence of other facts. A blow on the eye could produce a swollen condition after death. Even assuming that the doctor who went into the uterus and vagina with his fingers was very careful and did not rupture or injure the parts or cause dilation, and if the microscopical examination showed a dilation of the blood vessels of the vagina, discoloration of the walls, and swelling of the parts, the menses could have brought about this condition, and it would not necessarily be due to violence. Menstruation would not produce discoloration except there would be an increased reddening on account of the increased amount of blood. This change of color will be found wherever epithelium was, in the uterus and in the vagina. It would produce swelling wherever the mucous membrane was. A doctor could not look at cabbage in various stages of digestion and venture an opinion as to how long it had been in a woman's stomach. Doctors do not know, even apprximately, how soon after a stomach receives a certain substance before hydrochloric acid is found in a free state. It may be delayed for hours, it may be found earlier. Digestion has no fixed rule at all. The usual rule is the hydrochloric acid is found within a range of about half an hour. The time when it begins to descend depends upon the character of the food in the stomach and as to how the glands are acting.

RE-DIRECT EXAMINATION.

The human tongue could not produce any signs of violence in the vagina. Where there is a skull wound an inch and a half long cutting through the little arteries like the wound described above, it would bleed and if the body lay in one place 30 or 40 minutes there would be bleeding and if the body is picked up and carried about 40 feet and dropped at another place I would expect to find blood there. Skull wounds bleed very freely, and there would be blood wherever the body was.

DR. J. C. OLMSTEAD sworn for the Defendant.

Practicing physician for 36 years. Given the facts that a young lady 13 or 14 years old died and 8 or 10 hours after death the body was embalmed with a preparation containing 8 per cent. formaldehyde, and the body is exhumed at the end of 9 or 10 days, and a post-mortem examination shows a wound on the left side of the back of the head about an inch and a half long, with cuts through to the skull, but no actual fracture of the skull, but a hemorrhage under the skull corresponding to the point where the blow was delivered, with no injury to the brain, it would not be possible for a physician to determine whether or not that wound produced unconsciousness before death. Such a wound could have been made within a short while after death. It is impossible to tell from the mere fact of discoloration whether an eye was blackened before or after death. If the post-mortem made on the same subject 9 or 10 days after death showed upon an examination of the contents of the stomach a mixture of wheat bread and cabbage like this (State's Exhibit G), it being possible to distinguish a cabbage leaf, and 32 degrees of acidity, it would not be possible to determine from these facts or any other chemical facts that might be found there how long that had been in the stomach with any degree of accuracy. It is impossible to tell when hydrochloric acid begins to be secreted in a given case. The hydrochloric acid follows a curve; as a rule it ordinarily begins slowly until it reaches a certain point and then gradually goes off according to the character of the food and the amount in the stomach. After death free hydrochloric acid and pepsin do not remain in such a state in the stomach that you could tell 9 days afterward the exact time of death. The hydrochloric acid disappears after death, and neither it nor the pepsin would be present in any degree 9 or 10 days after death. Embalming fluid destroys the pancreatic juices so that it would be impossible to find them. Cabbage like that (State's Exhibit G) is liable to obstruct the opening of the pyloris, and to delay digestion. Food of that character might remain in the stomach undigested for 10 or 12 hours irrespective of the acid found there. If shortly after death a doctor makes a digital and visual examination of the vagina, opening the walls of the vagina with his hand, and finds no signs of violence and then 9 or 10 days after death a post mortem emanination shows the epithelium detached from the walls of the vagina in a number of places, and a microscope shows on parts of the

vagina removed from the body that the blood vessels are congested, this may be due to menstruation or the natural gravitation of blood to those parts and is not necessrily indicative of violence. Manipulation of the membrane would account for the displacing of the epithelium. The use of embalming fluid would make a diagnosis of violence utterly unreliable. Strangulation might result in a distension of the blood vessels. The entire pelvic vessels are always more or less congested during menstruation. No one could make a digital examination of the vagina of a corpse without disturbing the epithelium. It would be impossible for a doctor finding those conditions in the vagina by means of a microscope 9 or 10 days after death to tell that violence had been inflicted from 5 to 15 minutes before death.

CROSS EXAMINATION.

There are medical tables showing that wheat bread digests in about 2 1-2 hours and cabbage in about 4 1-2 hours. If cabbage cooked in the same way and bolted down in the same way is taken from the stomach of a living person within 30 or 50 minutes after having been eaten and is found in a similar condition to that of cabbage taken from the dead person's stomach 10 days after death, that would not necessarily mean that the latter cabbage had been in the stomach an equal length of time.

DR. W. S. KENDRICK, sworn for the Defendant.

I have been a practicing physician for thirty-five years. I was Dean of the Atlanta Medical College. I gave Dr. Harris his first position there. If a young lady between thirteen and fourteen years of age died and a post-mortem examination was made within eight or ten days after death, by a physician who makes a digital and visual examination to determine whether there is any violence to the vagina or not, and inserts his fingers for the purpose of deciding, and the body is embalmed, and after nine days it is disinterred and another post-mortem performed and the physician performing the post-mortem takes a half dozen strips and sees nothing with his naked eye by way of congestion, but by the use of a microscope finds that some of the epithelium is stripped from the wall of the vagina, I don't think that the finding of the epithelium stripped from the wall would indicate anything unusual. I don't think that would indicate any act of violence. A female's menstrual periods brings about congestion and hemorrhages of the blood vessels every time. The congestion gradually subsides within two or three days. That would not be any indication of violence, nor could you tell how long before death the violence had been inflicted. If a young lady had a wound on the back of the head about an inch and a half long cutting to the skull and the skull was open and a small hemorrhage was found, that did not involve pressure on the brain and the brain itself was not injured, I am positive that no man examining the body nine or ten days after death could have any way of telling whether that wound would produce unconsciousness

or not. It would be a pure conjecture if he said anything on that subject. Skulls are sometimes fractured without unconsciousness. Each stomach is a law to itself. It is a known fact that some stomachs will digest different substances quicker than others. I don't think that there is an expert in the world who could form any definite idea by either chemical analysis of the liquids of the stomach or by the condition of the cabbage lodged in the stomach as to how long it had been in the stomach.

CROSS EXAMINATION.

I am not a specialist of the stomach, but I am and have been teaching diseases of the stomach and all these cases come under my jurisdiction. Dr. Westmoreland is a surgeon, not a stomach specialist. Dr. Hancock is not a stomach specialist. If you find starch granules in the stomach undigested and cabbage undigested and thirty-two degrees of hydrochloric acid in the stomach and no dextrose and no maltose, the small intestines for six feet absolutely empty, the sides and glands of the stomach all normal, I would not have an opinion as to how long that cabbage was in the stomach for the reason that each case will order itself. Yes, there are certain general principles dealing with these matters. Hydrochloric acid appears early during digestion and in small quantity, and goes up. The main things in the stomach are pepsin and hydrochloric acid. As soon as a piece of cabbage or bread gets into the stomach the hydrochloric acid begins to attack it and works until it has a clear field and leaves nothing in the stomach, and thereafter the hydrochloric acid descends. I have made no effort whatever to find out how rapidly hydrochloric acid descends and ascends. I should think though that whenever you find no hydrochloric acid the process of digestion is ended and that if you find undigested things in the stomach and hydrochloric acid in a small degree, that the process of digestion had not been finished. That's the general rule. That does not apply in all cases. For instance, I can't digest cabbage at all. It will put me in bed. Each stomach is a law unto itself, so far as digestion goes, any statement to the contrary is incorrect. There are certain basic laws that apply to most people. I haven't read a work on digestion in ten years. If there be four different stages of digestion, I think it would be impossible for an expert to tell by an examination what stage of digestion certain things were in. There are so many exceptions to the rule. As to whether the cabbage had been digested or not, if whole pieces of cabbage were there I could tell, but if you could not find the cabbage either with the naked eye or the microscope, I would say that it had been digested. I don't know how long it takes an ordinary stomach to digest turnips. If a 13-year-old child ate cabbage and bread on Saturday and her body is found that night about three o'clock, with the tongue out, deep indentations in the neck, a small flow of blood from a wound in the back of the head, a discolor of blood over her pantlets, one of the drawers legs torn, the stocking supporter torn loose, rigor mortis had set in since 16 to 20 hours, all blood had settled down in that part where gravity had

taken it according to the way the body was lying and the small intestine was clear six feet below the stomach, the stomach was normal, and there was no mucous and every indication was that the digestion was progressing favorably and this cabbage was found with the naked eye in the stomach and unmistakable evidences of undigested starch granules and thirty-two degrees of hydrochloric acid, I say emphatically that no man living in my judgment could say how long that cabbage had been in the stomach. If Mary Phagan was alarmed concerning her surroundings, or knew that certain facts were upon her, digestion then and there would have almost been completely arrested. If she lived six or eight hours after this alarm, I say that no digestion could have continued up to the time of her death. Any kind of mental or physical excitement would largely arrest digestion, probably completely. I could tell by looking into the stomach that day, but if I examined that ten days afterwards, and found the cabbage in that state and I had said that death or excitement had arrested its digestion I would consider that I had stated one of the greatest absurdities of the day. I don't believe it is possible to tell a thing in the world of the contents of the stomach of a person that had been dead six or eight or ten days. Yes, that looks like cabbage (State's Exhibit G).

RE-DIRECT EXAMINATION.

That cabbage doesn't look (State's Exhibit G) as if it had been chewed at all. Cabbage chewed that way would be hard to digest.

JOHN ASHLEY JONES, sworn for the Defendant:

I have known Mr. Frank about a year or eighteen months. His general character is good.

CROSS EXAMINATION.

I am resident agent for the New York Life Insurance Company. I don't know any of the girls at the pencil factory. I have never heard any talk of Mr. Frank's practices and relations with the girls down there. Mr. Frank has a policy of insurance with us. It is our custom to seek a very thorough report on the moral hazard on all risks. The report on him showed up first class, physically as well as morally. I went to him in January, 1912, and tried to write him additional insurance, and on April 8th I went to the factory to take his application, where I met him and his wife. After a thorough examination of him by our physician and a very satisfactory report, covering his moral reputation, we issued him a standard policy. I have never heard of Mr. Frank going out to Druid Hills and being caught there, but it was the business of our inspector to find out that and he certainly would not have issued such a policy if he had found it out. Two or three of us in the office signed a long letter to the Grand Jury in the interest of justice. Mr. Robert L. Cooney, Mr. Hollingsworth, Mr. Clark and myself signed it. We decided this was a matter of persecution. I think Mr. Cooney started it. No, I have

never heard of Mr. Frank's kissing girls and playing with their nipples on their braests. I have never known Mr. Blackstock. I never heard that Mr. Frank would walk into the dressing room when the girls were dressing, nor that he tried to put his arms around Miss Myrtis Cato and tried to shut the door on her, or going in the dressing room with Lula McDonald and Rachael Prater, nor that Mrs. Pearl Darlson about five years ago threw a monkey wrench at him when he put his hand on her and held money in one hand. I have never seen any nude pictures hanging in his office, although I have been there a number of times. I have never heard that he smiled and winked at young girls.

RE-DIRECT EXAMINATION.

This is the letter I wrote to the Grand Jury: Mr. W. D. Beatty, Atlanta, Ga. My Dear Sir: Without having the slightest intention of interfering in any way in matters which do not concern me, I believe that the interest which any good citizen has in impartial justice warrants my saying that the business men to whom I have talked, commend very strongly the attitude of the Grand Jury in its disposition to at least investigate the merits of the situation as regards the negro Conley in the present matter which has interested the city of Atlanta so much that it is not necessary to describe it, and I sincerely hope that the Grand Jury will go into the matter exhaustively, knowing from the character of several of its members with whom I am acquainted that, to the best of their ability, the right thing will be done."

DR. LEROY CHILDS, sworn for the Defendant.

I am a surgeon. If a person dies and the body found three o'clock in the morning, rigor mortis not quite complete, embalmed the next day about ten o'clock, the body disinterred nine days later and a post-mortem made, and a wound is found on the back of the head behind the ear, almost two and a quarter inches long going through the skull, there was perhaps a drop of blood under the wound, no pressure on the brain, no fracture of the skull, it would be impossible to determine absolutely at that time whether or not that wound produced unconsciousness. You might hazard a guess. The presence of the blood on the skull would have no effect. It is the force that produced the drop of blood that is material. It would be purely a guess to say whether that produced unconsciousness or not. The wound would bleed if inflicted within an hour after death and would have the same appearance as if inflicted just before death. With such a wound it would be a guess for a doctor to say whether it was inflicted just immediately before death, or within an hour or two after death. Such a wound could be inflicted and a person remain perfectly unconscious. Fractured skull does not necessarily produce unconsciousness. Cabbage is a carbohydrate. It is considered the hardest food to digest among carbohydrates, because it has so much cellulose which is a woody fibre. The older the cabbage is the more cellulose it has. Cabbage gets its digestion in the mouth. That cabbage (State's Exhibit G)

has not been masticated thoroughly. They have been swallowed almost whole. Raw cabbage is easier digested than cooked cabbage. Cooked cabbage is the most indigestible form of it. It is the ptyaline in the saliva that acts on the cabbage in the mouth. It acts on the carbohydrate part of the cabbage. The carbohydrate digestion ceases after it leaves the mouth until it reaches the small intestines. The only thing that the stomach does is the churning movement by muscular action. As soon as gastric juice of the stomach strikes the cabbage it neutralizes the ptyalin and renders it inactive. It stops any further digestion of the carbohydrate. The balance of the digestion of the cabbage takes place in the small intestines by the pancreatic juices. The shortest time for boiled cabbage to pass into the small intestines is four and a half hours after it is eaten. The stomach does not digest the cabbage. A person may swallow cabbage and it will come out of him whole completely undigested, and it will appear less changed than that appears (State's Exhibit G). Psychic influences will retard digestion as excitement, fear, anger, also physical or mental exercise. Substances may be in the stomach quite a while and show very little evidences of digestion. Each stomach has its own peculiarities. If a human body is disinterred at the end of nine days and the stomach is taken out and among the contents you find cabbage like that (State's Exhibit G) and fragments of wheat bread slightly digested, you could not by looking at the cabbage hazard an opinion as to how long before death that had been taken into the stomach. I don't think it is possible to state within a period of hours how long that cabbage had been in the stomach. I have seen cabbage less changed than that cabbage you exhibited to me (State's Exhibit G) that has remained in the stomach 12 hours. Bread and cabbage will not begin to pass out of the stomach until 2 1-2 to three hours. A blow on the back of the head could blacken the eye. It would be perfectly possible for the epithelium of the vagina to be ruptured by the fingers in making a digital examination it would be more liable to rupture it ten hours after this than immediately before this. Decomposition destroys the epithelium. It is a very delicate membrane. Decompositon develops very rapidly on such epithelium. In cases of death by strangulation all the mucous membranes throughout the body are congested by blood. It is not unusual to find those blood vessels congested where death is by strangulation. In such a case I would expect to find congestion in the vagina, especially if a person had just had her monthly periods. Menses may be brought back by excitement. Violence would not be necessary to produce the conditons of congestion of the blood vessels that you have stated. The digital examination would be sufficient violence to produce the changes in the epithelium that you have stated. The congestion of the blood vessels could be entirely accounted for by natural causes, or from death by strangulation. If the epithelium stripped in some places and the blood vessels are found congested under the microscope, there is no possible way to determine if violence had caused it instead of natural causes, unless there is a sign of bacterial inflammation. It would be impossible to tell how long violence was inflicted before death, where

the body is disinterred nine days after death. I could not hazard a guess within two days of the time. I think I might in two weeks.

CROSS EXAMINATION.

The amount of digestion in the mouth depends on the amount of mastication in the mouth. If the food is bolted there is no digestion. I am not familiar with Dr. Crittendon's table. If he states that boiled cabbage is as easy to digest as raw cabbage he is at issue with the generally accepted authorities. Normal stomachs have certain idiosyncracies. Digestion in normal stomachs is supposed to go along certain stipulated rules. You find free hydrochloric acid in any stomach that has food at any stage of digestion. As to whether you could ever find free hydrochloric acid in the stomach immediately after taking Ewald's test breakfast, would depend entirely on the state of the glands, and how long previous digestion had been in the stomach. As to the total acidity in a stomach after such a test, that is for a laboratory man. If you take cabbage out of a stomach like that (State's Exhibit G), the size of the stomach is normal, no obstruction to the flow of the stomach, and you find hydrochloric acid combined to about 32 degrees, no free hydrochloric acid, that the starch of the wheat bread is slightly digested, and the state of the starch corresponds exactly to the state of the cabbage, I don't think you could tell inside of two hours or an hour and a half as to how long these things have been in a normal stomach. I have taken cabbage from a stomach by forced emesis twelve hours afterward and it did not show as much digestion as this cabbage (State's Exhibit G). The patient had a normal stomach, but the cabbage produced indigestion. That is the only experiment I have ever made with cabbage. If the little girl was found 16 to 20 hours after she was murdered, and there is a wound on the back of the head, with a samll blood clot nine days after the thing happened, and 16 to 20 hours after her death the blood underneath the hair is still moist and there is a deep indentation in the neck, showing where a cord had been put around the throat and the tongue is out and the face livid and the nails blue and the lips blue and an injury to the wind pipe, I would say that the blow on the head did not cause death.

ALFRED LORING LANE, sworn for the Defendant.

I am a resident of Brooklyn, N. Y. I have known Leo Frank about 15 years. I knew him four years at Pratt Institute, which we both attended. I also knew him after he returned from Cornell University. His general character is good.

PHILIP NASH, sworn for the Defendant.

I live in Ridgewood, N. J. I am connected with the New York Telephone Company, in New York City. I knew Leo Frank four years at Pratt Institute. I was in his class. His general character is good.

RICHARD A. WRIGHT, sworn for the Defendant.

I live in Brooklyn, N. Y. I am a consulting engineer, with offices in New York City. I knew Leo Frank four years at Pratt Institute. I also knew him three years at Cornell. His general character is good.

HARRY LEWIS, sworn for the defendant.

I live in Brooklyn, N. Y. I am a lawyer. I was formerly Assistant District Attorney of Brooklyn. I have known Leo Frank about twelve years. I have been a neighbor of his until he came South. His general character is good.

HERBERT LASHER, sworn for the Defendant.

I live in New York State. I manage my father's estates. I knew Leo Frank at Cornell University, during the years 1903-4-5-6. I was in his class, and we roomed together for two years. His general character was very good.

CROSS EXAMINATION.

He associated with the finest class of students at the University. I kept up a correspondence with him a couple of years after he left Cornell.

JOHN W. TODD, sworn for the Defendant.

I reside in Pittsburg. I am assistant purchasing agent for the Crucible Steel Co. I attended Cornell University with Leo Frank. I knew him for years during the time I was in College. I am the life treasurer of our class. His general character was good.

PROF. C. D. ALBERT, sworn for the Defendant.

I am professor of machine designs in Cornell University. I have held that chair for five years. I knew Leo M. Frank for two years while he attended the University. At that time I was instructor in mechanical laboratory, and as such I came in contact with him. His character was very good.

PROF. J. E. VANDERHOEF, sworn for the Defendant.

I am foreman of the foundry at Cornell University. I knew Leo Frank for two years when he attended the University. His character was good.

CROSS EXAMINATION.

I have been at Cornell 25 years. As to what caused me to take any special notice of Leo Frank I come in contact with him every alternate day while

he was there. I know the characteristics of the boys very well. No, I can not tell what Frank did when he was in the class room.

V. H. KRIEGSHABER, sworn for the Defendant.

I live in Atlanta. I have known Leo Frank for about three years. His general character is good.

CROSS EXAMINATION.

I did not come in contact with him frequently. I am a Trustee of the Hebrew Orphans Home and Mr. Frank is also. I met him once a month there. I don't know how long he has been on the Board. I have met him there probably twice. He also came quite frequently to the Orphans Home with his uncle, before he was elected to the board. I did not come in contact with him socially.

M. F. GOLDSTEIN, sworn for the Defendant.

I practice law in Atlanta. I have known Leo Frank about three and a half years. His character is very good.

CROSS EXAMINATION.

We used to live on the same street together. I would see him nearly every day. I would see him at the Progress Club a few times every month. During the last two years, he was the next ranking officer to me in the Lodge.

DR. DAVID MARX, Jewish Rabbi, and R. A. SONN, Superintendent of the Hebrew Orphans Home, being sworn for the Defendant, testified that they had known Leo Frank very well ever since he came to live in Atlanta and that his character was good.

ARTHUR HEYMAN, sworn for the Defendant.

I practiced law about nineteen years in Atlanta. I have known Leo Frank for three or four years. His general character is good.

CROSS EXAMINATION.

I have been with him seven or eight times in three years. I have been with him alone, I suppose, five or six times, probably for fifteen or twenty minutes at a time. I have never heard any reference made to his relation with the girls in the factory.

MRS. H. GLOGOWSKI, sworn for the Defendant.

I keep a boarding house in this city. I have known Mr. Frank more than three years. He and his wife boarded with me for seven months. His character is good.

MRS. ADOLPH MONTAG, sworn for the Defendant.

I am a sister of Mr. Sig Montag. I have known Mr. Frank five years. His character is very good.

CROSS EXAMINATION.

I have heard of his character through the ladies he has lived with. Mrs. Meyers has told me how nice he always was to her. My husband has always spoken well of him. I have heard a great many people speak well of him. I heard his uncle speak well of him. My husband has told me what a fine, intelligent gentleman he was.

MRS. J. O. PARMELEE, sworn for the Defendant.

My husband is a stockholder in the National Pencil Company. Mr. Frank's general character is very good.

CROSS EXAMINATION.

I have seen Mr. Frank at the jail twice. I have only come in contact with him once at the factory. I am a member of the Board of Sheltering Arms, and I have heard a great deal of Mr. Frank in matters of charity and in a social way. I have heard different people speak of him, a great many people. I have heard the Liebermans, the Montags, the Haases, Mrs. Bauer, Mr. Parmalee and the employees at the factory speak of him.

MISS IDA HAYS, sworn for the Defendant.

I work at the pencil factory on the fourth floor. I have known Mr. Frank for two years. His general character is good. I have known Conley for two years. His general character for truth and veracity is bad. I would not believe him on oath.

CROSS EXAMINATION.

Conley borrowed money and promised to pay it back, but he didn't do it. We would get it after awhile. He tried to borrow money from me, but I refused to let him have it.

MISS EULA MAY FLOWERS, sworn for the Defendant.

I work on the second floor of the pencil factory. I have known Mr. Frank for three years. His general character is good. I have known Conley for two years. His general character for truth and veracity is bad.

CROSS EXAMINATION.

His borrowing money and not paying it back is one thing. He has promised and he has never paid back anything he has ever borrowed from me. I had Mr. Gantt take it out of his envelope. I have never met Mr. Frank anywhere for any immoral purpose.

MISS OPIE DICKERSON, sworn for the Defendant.

I have worked at the pencil factory for 17 months. Mr. Frank's general character is good. I have never met Mr. Frank for any immoral purpose. I have known Jim Conley ever since I have been at the factory. His general character for truth and veracity is bad. I would not believe him on oath.

CROSS EXAMINATION.

I know Mr. Darley and Mr. Wade Campbell. I don't remember if I was with them on the night of April 26. I don't remember where I was.

MRS. EMMA CLARK FREEMAN, sworn for the Defendant.

I have worked at the pencil factory over four years. Mr. Frank's general character is good. I am a married woman. I have known Conley ever since he has been at the factory. His general character for truth and veracity is bad. I would not believe him on oath.

CROSS EXAMINATION.

I have never heard any suggestion of any wrongdoing on the part of Mr. Frank, either in or out of the factory. I was forelady at the factory for about three years.

MISS SARAH BARNES, sworn for the Defendant.

I worked at the pencil factory over four years. His character is good. I have never heard anything bad. He has been the best of men.

CROSS EXAMINATION.

No one has talked to me about what I was going to swear. I have told Mr. Arnold what I have told here. I never went with Mr. Frank for any immoral purpose anywhere.

MISS IRENE JACKSON, sworn for the Defendant.

I worked at the pencil factory for three years. So far as I know Mr. Frank's character was very well. I don't know anything about him. He never said anything to me. I have never met Mr. Frank at any time for any immoral purpose.

CROSS EXAMINATION.

I am the daughter of County Policeman Jackson. I never heard the girls say anything about him, except that they seemed to be afraid of him. They never would notice him at all. They would go to work when they saw him coming. Miss Emily Mayfield and I were undressing in the dressing room once when Mr. Frank came to the door. He looked, turned around and walked out. He just came to the door and pushed it open. He smiled or made some kind of face. Miss Mayfield had her top dress off and had her old dress in her hand to put it on. I told Mr. Darley I would not quit unless my father made me, and he said if the girls would stick to Frank they won't lose anything. I heard some remarks two or three times about Mr. Frank going to the dressing room on different occasions, but I don't remember anything about it. The second time I heard of his going to the dressing room was when my sister was laying down there. She had her feet on a stool. She was dressed. I was in there at the time. He just walked in, and turned and walked out. Mr. Frank walked in the dressing room on Miss Mamie Kitchens, when I was in there. He never said anything the three times he walked in when I was there. The dressing room has a mirror and a few lockers for the foreladies. That's the only thing that I have ever seen Mr. Frank do, go in the dressing room and stare at the girls. I have heard them speak of other times when I was not there.

RE-DIRECT EXAMINATION.

My father made me quit, after the murder. There are two windows in the dressing room opening on Forsyth Street. I think there had been some complaints of the girls flirting through the windows. I have heard of some of the girls flirting through the windows. The orders were against the girls flirting through the windows. Mr. Frank never came into the room at all, he pushed the door open and just looked. My sister and I were both dressed when Mr. Frank looked in the door. The other time he came in I was fixing to put on my street dress. I was not undressed.

RE-CROSS EXAMINATION.

I don't know if Mr. Frank knew the girls were in there before he opened the door or not. It was the usual hour for them to be in there. He could have seen the girls register from the outer office, but not from the inner office. I have never heard any talk about Mr. Frank going around and putting his hands on the girls. I have never heard of his going out with any of the girls.

My sister quit at the factory before Christmas. I have never flirted with anybody out of the window. I have heard them say that they didn't want the girls to flirt around the factory. I have heard Mr. Frank say that to Miss McClellan, after she told him that she knew of some of the girls flirting.

MISS BESSIE FLEMING, sworn for the Defendant.

I worked as stenographer at Mr. Frank's office from April, 1911, to December, 1911. Mr. Frank's character was unusually good.

CROSS EXAMINATION.

I am just talking about my personal relations with him. I have never seen him do anything wrong there in the factory. He never made any advances to me or anyone else. I worked right in the same office with him. The foreladies came to the office, the other girls did not very much. I never did see any flirting. I never heard about any. Mr. Frank worked on his financial sheet in the afternoons, he didn't have time Saturday morning. I didn't stay there very often on Saturday afternoons, but I knew that he didn't have time to do it Saturday morning. I saw him on Saturdays during the mornings making out the financial sheet. The girls work by the hour and piece work. She has a right to go in there when she wants to dress to go out.

MRS. MATTIE THOMPSON, sworn for the Defendant.

I work on the fourth floor of the pencil factory. I have been there three years. Mr. Frank's general character is good. I have never heard anything against him. I have never met Mr. Frank anywhere or at any time for any immoral purpose. I have made complaint about girls flirting out of the windows with men on the outside. After seven o'clock, the girls are not supposed to be in the dressing room. There is no toilet or bathtub in the dressing room. There is no lock on the door.

CROSS EXAMINATION.

They were all complaining up there on the fourth floor about the girls flirting out of the window, and some of us elderly ladies put a stop to it by reporting it to Mr. Darley. The girls were not fast, but they would flirt. Mrs. Carson, I and some of the other ladies reported it to Mr. Darley last spring, about a year ago. The girls simply said they were standing at the windows, flirting out of the windows with men in the street. Girls did not go into the dressing room to rest, they would go to change their clothes before work time, and after finishing work. I have never heard any talk about Frank taking a girl off in a dark place and putting his arms around her.

MISS IRENE CARSON, sworn for the Defendant.

I worked for fifteen months on the fourth floor of the pencil factory. I have known Mr. Frank during that time. His character is good. I am a sister of Miss Rebecca Carson, and a daughter of Mrs. E. H. Carson. I was with my sister on Whitehall Street on April 26th and recollect seeing Mr. Frank there. I have never met Mr. Frank at any time or place for any immoral purpose.

MRS. J. J. WARDLAW, sworn for the Defendant.

I worked at the pencil factory four years. I worked on the fourth floor. Mr. Frank's character is good. I have never met Mr. Frank at any time or place for any immoral purpose.

CROSS EXAMINATION.

I have never heard of any improper relation of Mr. Frank with any of the girls at the factory. I have never heard of his putting his arm around any girl on the street car, or going to the woods with them.

LEO M. FRANK, the defendant, made the following statement:

Gentlemen of the Jury: In the year 1884, on the 17th day of April, I was born in Quero, Texas. At the age of three months, my parents took me to Brooklyn, New York, and I remained in my home until I came South, to Atlanta, to make my home here. I attended the public schools of Brooklyn, and prepared for college, in Pratt Institute, Brooklyn, New York. In the fall of 1902, I entered Cornell University, where I took the course in mechanical engineering, and graduated after four years, in June, 1906. I then accepted a position as draftsman with the B. F. Sturtevant Company, of Hyde Park, Massachusetts. After remaining with this firm for about six months, I returned once more to my home in Brooklyn, where I accepted a position as testing engineer and draftsman with the National Meter Company of Brooklyn, New York. I remained in this position until about the middle of October, 1907, when, at the invitation of some citizens of Atlanta, I came South to confer with them in reference to the starting and operation of a pencil factory, to be located in Atlanta. After remaining here for about two weeks, I returned once more to New York, where I engaged passage and went to Europe. I remained in Europe nine months. During my sojourn abroad, I studied the pencil business, and looked after the erection and testing of the machinery which had been previously contracted for. The first part of August, 1908. I returned once more to America, and immediately came South to Atlanta, which has remained my home ever since. I married in Atlanta, an Atlanta girl, Miss Lucile Selig. The major portion of my married life has been spent at the home of my parents in law, Mr. and Mrs. Selig, at 68 East Georgia Avenue. My married life has been exceptionally happy,—indeed, it has been

the happiest days of my life. My duties as superintendent of the National Pencil Company were, in general, as follows: I had charge of the technical and mechanical end of the factory, looking after the operations and seeing that the product was turned out in quality equal to the standard which is set by our competitors. I looked after the installation of new machinery and the purchase of new machinery. In addition to that, I had charge of the office work at the Forsyth Street plant, and general supervision of the lead plant, which is situated on Bell Street. I looked after the purchase of the raw materials which are used in the manufacture of pencils, kept up with the market of those materials, where the prices fluctuated, so that the purchases could be made to the best possible advantage. On Friday, April 15th, I arrived at the pencil factory on Forsyth Street, at about seven o'clock,—my usual time. I immediately started in on my regular routine work, looking over papers that I had laid out the evening before, and attending to any other work that needed my special attention that morning. At about 9:30 I went over to the office of the General Manager and Treasurer, Mr. Sigmond Montag, whose office is at Montag Brothers, on Nelson Street. I stayed over there a short time, got what papers and mail had arrived over there—all the mail for the pencil company comes over there to their office—I got that mail and brought it back to Forsyth Street. I then separated the mail and continued along my usual routine duties in the office on Forsyth Street. At about eleven o'clock, Mr. Schiff handed me the pay-roll books covering the plants at Forsyth Street and at Bell Street, for me to check over to see that the amounts and the extensions were correct. Of course, this work has to be very carefully done, so that the proper amount of money is drawn from the bank. This checking took me until about 12:30, P. M., when I made out the amount on a slip of paper that I wished to have drawn from the bank, went over to Montag Brothers, had the checks drawn and signed by Mr. Sigmond Montag, after which I returned to Forsyth Street and got the leather bag in which I usually carry the money and coin from the bank, and got the slip on which I had written the various denominations in which I desired to have the pay-roll made out, accompanied by Mr. Herbert Schiff, my assistant, went to the Atlanta National Bank, where I had the checks cashed. Returning to the factory in company with Mr. Schiff, I placed this bag containing the money for the pay-roll in the safe and locked it. At this time, my wife called for me and in her company and that of Mr. Schiff, I went over to the car and took my wife home to lunch. After lunch, I returned to the factory and took a tour for about an hour through the factory, after which I then assisted Mr. Schiff in checking over the amounts on the pay envelopes,—checking the money against the duplicate slips that we had gotten from the bank, to see that the correct amount had been given us, and I helped Mr. Schiff checking over the money and in filling the envelopes. This took us approximately until a quarter to six, to fill the envelopes, seal them and place them in the box that we have over there, with two hundred pigeon holes, and which we call our pay-off box. While I was so cccupied with Mr. Schiff in filling these envelopes, a young man

by the name of Wright, who had helped us out as a clerk in the office during the past week, came in and I paid him in cash, as Mr. Schiff, I found, neglected to put his name on the pay-roll; I just made out a ticket for the amount of money he drew and put it in the cash box and charged it to the cash box and not to the pay-roll. At a quarter to six, payment of the help took place, Mr. Schiff taking all the envelopes that were due the help who had worked from April 18th to 24th, inclusive, out to the pay-roll window, which is entirely outside of either my inner office or the outer office and out in the hall beyond,—a little window that we have built. I sat in my office checking over the amount of money which had been left over. This amount was equal,—or should have been equal, to the amount that had been loaned out in advance to help and had been deducted when we were filling the envelopes. In checking this amount over,—as near as I can recollect it, there was about $15.00,—I noticed a shortage of about $1.20,—something over a dollar, at any rate, and I kept checking to see if I couldn't find the shortage going over the various deductions that had been made, but I couldn't locate it that evening. After the help had been paid off, during which time as I sat in my office, no one came into my office who asked me for a pay envelope or for the pay envelope of another. After the paying off of the help had taken place, Mr. Schiff returned and handed me the envelopes which were left over, bound with an elastic band, and I put them in the cash compartment,—which is different from the cash box,—a certain cash compartment in the safe, the key to which is kept in my cash box. I placed them in the safe, and Mr. Schiff busied himself clearing up the books and the files and placing them in the safe. While he was doing that, I placed in the time clocks, the slips to be used next day. I took out the two time slips which were dated April 25, which had been used by the help on Friday, April 25th, and took two slips out to the clock, the ends of which I creased down so that they would fit into the cylinder inside of the clocks; and I noticed that I had neglected to stamp the date on them, so I just wrote on them "April 26, 1913,"—in other words, I put the date of the day following, which is the way we usually do with the time clock. After placing these slips in the clock and bringing those back in the office, Mr. Schiff and myself left for home, it being about 6:30. I neglected to state that while I was sitting in the office, Mr. Schiff was paying off Newt Lee—these are the two time slips I took out—

Gentlemen, as I was saying, these two slips that had April 26th, 1913, written at the bottom are the two slips I put in the clock on the evening of Friday April 25th, to be used on the day following, which, of course, was April 26th. I neglected to mention also, in going over my duties at the factory, that Mr. N. V. Darley was superintendent of labor and of manufacture, it fell to his duty to engage the help and to distribute the help throughout the plant, and to discharge the help in case it was necessary; it was also due to him whether their wages were raised or not. In other words, he was the man that came directly in contact with the help. Moreover, he saw that the goods progressed

through the factory without stopping, easily, quickly and economically manufactured. On Friday evening, I got home at about 6:30, had my supper, washed up, then went with my wife to the residence of her uncle, Mr. Carl Wolfsheimer, on Washington Street, where my wife and Mr. Wolfsheimer and his wife and myself played a game of auction bridge for the balance of the evening. My wife and I returned home and retired at about eleven o'clock. On Saturday April 26th, I rose between seven and seven thirty and leisurely washed and dressed, had my breakfast, caught a Washington Street or Georgia Avenue car,—I don't recall which, at the corner of Washington and Georgia Avenue, and arrived at the factory on Forsyth Street, the Forsyth Street plant, at about 8:30, is my recollection.

On my arrival at the factory, I found Mr. Holloway, the day watchman, at his usual place, and I greeted him in my usual way; I found Alonzo Mann, the office boy, in the outer office, I took off my coat and hat and opened my desk and opened the safe, and assorted the various books and files and wire trays containing the various papers that were placed there the evening before, and distributed them in their proper places about the office. I then went out to the shipping room and conversed a few minutes with Mr. Irby, who at that time was shipping clerk, concerning the work which he was going to do that morning, though, to the best of my recollection, we did no shipping that day, due to the fact that the freight offices were not receiving any shipments, due to its being a holiday. I returned to my office, and looked through the papers, and assorted out those which I was going to take over on my usual trip to the General Manager's office that morning; I then turned to the invoices (Defendant's Exhibit 25 to 34) covering shipments which were made by the Pencil Factory on Thursday, April 24th, and which were typwritten and figured out on Friday, April 25th, by Miss Eubanks, the stenographer who stays in my office; she had hurried through with her work that day, previous to going home, so she could spend the holiday in the country where she lived; I didn't get to checking over those invoices covering these shipments on Friday, due to the fact that Mr. Schiff and myself were completely occupied the entire day until we left the factory, with the pay-roll, so naturally, as these invoices covering shipments which were made on April 25th, ought to have been sent to the customers, I got right to work in checking them. Now, I have those invoices here (Defendant's Exhibit 25-34); these papers have not been exhibited before, but I will explain them. You have seen some similar to these. Of all the mathematical work in the office of the Pencil Factory, this very operation, this very piece of work that I have now before me, is the most important, it is the invoice covering shipments that are sent to customers, and it is very important that the prices be correct, that the amount of goods shipped agrees with the amount which is on the invoice, and that the terms are correct, and that the address is correct, and also in some cases, I don't know whether there is one like that here, there are freight deductions, all of which have to be very carefully checked over and looked into, because I know of nothing else that

exasperates a customer more than to receive invoices that are incorrect; moreover, on this morning, this operation of this work took me longer than it usually takes an ordinary person to complete the checking of the invoices, because usually one calls out and the other checks, but I did this work all by myself that morning, and as I went over these invoices, I noticed that Miss Eubanks, the day before, had evidently sacrificed accuracy to speed, and every one of them was wrong, so I had to go alone over the whole invoice, and I had to make the corrections as I went along, figure them out, extend them, make deductions for freight, if there were any to be made, and then get the total shipments, because, when these shipments were made on April 24th, which was Thursday, this was the last day of our fiscal week, it was on this that I made that financial sheet which I make out every Saturday afternoon, as has been my custom, it is on this figure of total shipments I make that out, so necessarily it would be the total shipments for the week that had to be figured out, and I had to figure every invoice and arrange it in its entirety so I could get a figure that I would be able to use. The first order here is from Hilton, Hart & Kern Company, Detroit, Mich., here is the original order which is in the file of our office, here is the transcription which was made on March 28th, it hadn't been shipped until April 24th, this customer ordered 100 gross of No. 2 of a certain pencil stamped "The Packard Motor Car Company," 125 gross of No. 3 and 50 gross of No. 4; those figures represent the grade or hardness of the lead in the pencils; we shipped 100 gross of No. 2, 111¼ gross of No. 3 and 49 gross of No. 4, the amount of the shipment of No. 3 is short of the amount the customer ordered, therefore, there is a suspense shipment card attached to it, as you will notice, the first shipment on this order took place on April 24th, it was a special order and a special imprint on it, and therefore, the length of time, order received at the factory on March 18th. In invoicing shipments made by the Pencil Company, our method is as follows: We make out in triplicate, the first or original is a white sheet, and that goes to the customers; the second is a pink sheet and that goes over to the General Manager's office and is filed serially, that is, chronologically; one date on the top, and from that the charges are made on the ledger, and the last sheet or third sheet is a yellow sheet, which is here, those are placed in a file in my office, and are filed alphabetically. These yellow sheets I have here are not the yellow sheets I had that day, because they have since been corrected, I am just taking the corrected sheets. I made the corrections, Miss Eubanks returned on Monday and saw the corrections I had made in pencil on the white sheets, and made another set of triplicates afterwards, and I presume made them correct, I was not there, and I don't know. These orders are rspectively Hilton, Hart & Kern Company, L. W. Williams & Company of Fort Worth, Tex., the Fort Smith Paper Company of Fort Smith, Ark., S. O. Barnum & Sons, Buffalo, N. Y., S. T. Warren & Company, South Clarke St., Chicago, Ill., S. H. Kress Company, warehouse at 91 Franklin St., New York, N. Y.; there is an order that we have to be particularly careful with, because all these five and ten cent syndicates have a great deal of red tape. These invoices, though they

were typed on April 25th, Friday, were shipped on April 24th, and bear date at the top on which the shipment was made, irrespective of the date on which these are typewritten; in other words, the shipments took place April 24th, and that date is at the top typewritten, and a stamp by the office boy at the bottom, April 24th. Among other things that the S. H. Kress Company demands is that on their orders, you must state whether or not it is complete, the number of the store, and by which railroad the shipment goes. Here is one from F. W. Woolworth & Company, Frankfort, Ind., take the following illustrations: Less 95 lbs., at 86 cents per hundred lbs., freight credit; in other words, we had to find out what the weight of that shipment was, and figure out the amount of credit that they were entitled to on the basis of 86 cents for every 100 lbs. shipped. Then here comes one to Gottlieb & Sons one of our large distributors in New York, N. Y., they have a freight allowance of 86 per hundred lbs. also, and their shipment amounted to 618 lbs., on Thursday, April 24th. That was a shipment of throwouts, or jobs.

I started on this work, as I said, and had gone into it in some detail, to show you the carefulness with which the work must be carried out, I was at work on this one at about 9 o'clock, as near as I remember, Mr. Darley and Mr. Wade Campbell, the inspector of the factory, came into the outer office, and I stopped what work I was doing that day on this work, and went to the outer office and chatted with Mr. Darley and Mr. Campbell for ten or fifteen minutes, and conversed with them, and joked with them, and while I was talking to them, I should figure about 9:15 o'clock, a quarter after nine, Miss Mattie Smith came in and asked me for her pay envelope, and for that of her sister-in-law, and I went to the safe and unlocked it and got out the package of envelopes that Mr. Schiff had given me the evening before, and gave her the required two envelopes, and placed the remaining envelopes that I got out, that were left over from the day previous, in my cash box, where I would have them handy in case others might come in, and I wanted to have them near at hand without having to jump up and go to the safe every time in order to get them; I keep my cash box in the lower drawer on the left hand side of my desk. After Miss Smith had gone away with the envelopes, a few minutes, Mr. Darley came back with the envelopes, and pointed out to me an error in one of them, either the sister-in-law of Miss Mattie Smith, she had gotten too much money, and when I had deducted the amount that was too much, that amount balanced the pay-roll, the error in the pay-roll that I had noticed the night before, and left about five or ten cents over; those things usually right themselves anyhow. I continued to work on those invoices, when I was interrupted by Mr. Lyons, Superintendent of Montag Brothers, coming in, he brought me a pencil display box that we call the Panama assortment box, and he left it with me, he seemed to be in a hurry, and I told him if he would wait for a minute I would go over to Montag Brothers with him, as I was going over there; and he stepped out to the outer office, and as soon as I come to a convenient stopping place in the work, I put the papers I had made out to take

with me in a folder, and put on my hat and coat and went to the outer office, when I found that Mr. Lyons had already left. Mr. Darley left with me, about 9:35 or 9:40, and we passed out of the factory, and stopped at the corner of Hunter and Forsyth Streets, where we each had a drink at Cruickshank's soda water fount, where I bought a package of Favorite cigarettes, and after we had our drink, we conversed together there for some time, and I lighted a cigarette and told him good-bye, as he went in one direction, and I went on my way then to Montag Brothers, where I arrived, as nearly as may be, at 10 o'clock, or a little after; on entering Montag Brothers, I spoke to Mr. Sig Montag, the General Manager of the business, and then the papers which I collected, which lay on his desk, I took the papers out and transferred them into the folder, and took the other papers out, which I had in my folder, and distributed them at the proper places at Montag Brothers, I don't know just what papers they were, but I know there were several of them, and I went on chatting with Mr. Montag, and I spoke to Mr. Matthews, and Mr. Cross, of the Montag Brothers, and after that I spoke to Miss Hattie Hall, the Pencil Company's stenographer, who stays at Montag Brothers, and asked her to come over and help me that morning; as I have already told you, practically every one of these invoices was wrong, and I wanted her to help me on that work, and in dictating the mail; in fact, I told her I had enough work to keep her busy that whole afternoon if she would agree to stay, but she said she didn't want to do that, she wanted to have at least half a holiday on Memorial Day. I then spoke to several of the Montag Brothers' force on business matters and other matters, and after that I saw Harry Gottheimer, the sales manager of the National Pencil Company, and I spoke at some length with him in reference to several of his orders that were in work at the factory, there were two of his orders especially that he laid special stress on, as he said he desired to ship them right away, and I told him I didn't know how far along in process of manufacture the orders had proceeded, but if he would go back with me then I would be very glad to look for it, and then tell him when we could ship them, and he said he couldn't go right away, he was busy, but he would come a little later, and I told him I would be glad for him to come over later that morning or in the afternoon, as I would be there until about 1 o'clock in the morning, and after three. I then took my folder and returned to Forsyth Street alone. On arrival at Forsyth Street, I went to the second or office floor, and I noticed the clock, and it indicated five minutes after 11 o'clock. I saw Mr. Holloway there, and I told him he could go as soon as he got ready, and he told me he had some work to do for Harry Denham and Arthur White, who were doing some repair work up on the top floor, and he would do the work first. I then went into the office. I went in the outer office, and found Miss Hattie Hall, who had preceded me over from Montag's, and another lady who introduced herself to me as Mrs. Arthur White, and the office boy; Mrs. Arthur White wanted to see her husband, and I went into the inner office, and took off my coat and hat, and removed the papers which I had brought back from Montag Brothers in the folder, and put the folder away.

It was about this time that I heard the elevator motor start up and the circular saw in the carpenter shop, which is right next to it, running. I heard it saw through some boards, which I supposed was the work that Mr. Holloway had referred to. I separated the orders from the letters which required answers, and took the other material, the other printed matter that didn't need immediate attention, I put that in various trays, and I think it was about this time that I concluded I would look and see how far along the reports were, which I use in getting up my financial report every Saturday afternoon, and to my surprise I found that the sheet which contains the record of pencils packed for the week didn't include the report for Thursday, the day the fiscal week ends; Mr. Schiff evidently, in the stress of getting up, figuring out and filling the envelopes for the pay-roll on Friday, instead of, as usual, on Friday and half the day Saturday, had evidently not had enough time. I told Alonzo Mann, the office boy, to call up Mr. Schiff, and find out when he was coming down, and Alonzo told me the answer came back over the telephone that Mr. Schiff would be right down, so I didn't pay any more attention to that part of the work, because I expected Mr. Schiff to come down any minute. It was about this time that Mrs. Emma Clarke Freeman and Miss Corinthia Hall, two of the girls who worked on the fourth floor, came in, and asked permission to go upstairs and get Mrs. Freeman's coat, which I readily gave, and I told them at the same time to tell Arthur White that his wife was downstairs. A short time after they left my office, two gentlemen came in, one of them a Mr. Graham, and the other the father of a boy by the name of Earle Burdette; these two boys had gotten into some sort of trouble during the noon recess the day before, and were taken down to police headquarters, and of course didn't get their envelopes the night before, and I gave the required pay envelopes to the two fathers, and chatted with them at some length in reference to the trouble their boys had gotten into the day previous. And just before they left the office, Mrs. Emma Clark Freeman and Miss Corinthia Hall came into my office and asked permission to use the telephone, and they started to the telephone, during which time these two gentlemen left my office. But previous to that, when these two gentlemen came in, I had gotten Miss Hattie Hall in and dictated what mail I had to give her, and she went out and was typewriting the mail; before these girls finished their telephoning, Miss Hattie Hall had finished the typewriting of those letters and brought them to my desk to read over and sign, which work I started. Miss Clark and Miss Hall left the office, as near as may be, at a quarter to twelve, and went out, and I started to work reading over the letters and signing the mail. I have the carbon copies (Defendant's Exhibit 8) of these letters which Miss Hall typewrote for me that morning here, attached to the letters from the customers, or the parties whose letter I was answering; they have been introduced, and have been identified. I see them here—Southern Bargain House, there was a letter from Shode-Lombard, dye makers, 18 Franklin Street, the American Die Lock Company, Newark, N. J., another letter to Shode-Lombardt Company being in New York, one to Henry Disston & Sons, in reference to a knife which they

sent us to be tried out, a circular knife, one to J. B. McCrory, Five & Ten Cent Syndicate, one to the Pullman Company, of Chicago, Ill., in reference to their special imprint pencils, which they were asking us to ship as soon as possible, one to A. J. Sassener, another die maker; these letters are copies of the ones I dictated that morning; I signed these letters, and while I was signing, as Miss Hall brought these letters in to be signed, I gave her the orders (Defendant's Exhibit 14 to 24) which had been received by me that morning at Montag's office, over at the General Manager's office, I gave her these orders to be acknowledged. I will explain our method of acknowledgment of orders in a few minutes. I continued signing the letters and separating the carbon copies from the letters, and putting them in various places, I folded the letters and sealed the letters, and of course I told Miss Hall I would post them myself. Miss Hall finished the work and started to leave when the 12 o'clock whistle blew, she left the office and returned, it looked to me, almost immediately, calling into my office that she had forgotten something, and then she left for good. Then I started in, we transcribed, first we enter all orders into the house order book (Defendant's Exhibit 12), all these orders which Miss Hall had acknowledged, I entered in that book, and I will explian that matter in detail. There has been some question raised about this, but I believe I can make it very clear. Here is an order from Beutell Brothers Company (Defendant's Exhibit 32); the very first operation on an order that is received by the Pencil Factory at Forsyth Street in my office is the acknowledgment; that is the first operation, because the acknowledgment is the specific second part of the contract, the first part is when they send us the order; that is the party of the first part, and the party of the second part is when we write them an acknowledgment card and agree to fill the order, and enter the order which they send us, and so necessarily, to satisfy our customers, it must be the very first thing that is done, and is the first thing. The acknowledgment stamp, which you have already seen here below, shows first two things; first, who acknowledges the order, and second, the date it was received in the office on Forsyth Street. Here is one from Butell Brothers (Defendant's Exhibit 32); that bears the date April 23rd, up at the top; that was the date when Beutell Brothers in Dubuque, Ia., had that letter typewritten, we didn't know when they mailed it, but that is the day it was written, it was received at the General Manager's office, might have been received Friday, on Friday April 25th, after I had gotten the mail that day there, and remained there until April 26th, when I went over and got the mail again. Here is one from John Laurie & Sons, and here is one I think Mr. Dorsey did some questioning about, because of the fact that up here at the top was 4-22, this order was written in pencil, of course it is written in pencil; this is an order from F. W. Woolworth & Company (Defendant's Exhibit 28), that is a Five & Ten Cent syndicate, as you know, probably the largest in the world, that has over 700 stores, and these stores would be so bulky for one office to handle that the 700 stores are divided into different groups or provinces, and in charge of each group there is a certain office; for instance, there is one at Toronto, for the Canadian stores;

one in Buffalo, one in Boston, one in New York, there is one at Wilkesbarre, one at St. Louis, one at Chicago, and one at San Francisco. Now, this order, by looking at it, I can tell, because I have had reason to look into and know the system of orders used by this syndicate, and I most assuredly have to know it, you notice Chicago, Ill., 4-22, down here, and also store No. 585 (Defendant's Exhibit 28), the Woolworth Company 347 E. Main St., here again is DeKalb, Ill. In other words, DeKalb, Ill., is in the jurisdiction of the Chicago office. These blanks are distributed among these various five and ten cent stores, and the manager of one store, when he wants to order goods, he finds his stock is getting a little low, he makes that out and sends his order in to the Chicago office; at the Chicago office, the buyer looks over it, and sees that the manager has carefully and economically ordered the goods, and then you will notice that little stamp punched through; you see up there, that says: "Valid, 4-23," in other words, of course, we couldn't have put that on there at our office, but the validation stamp, with 4-23, the date of it, shows it took a day to travel from DeKalb, Ill., to Chicago, Ill., and that stamp shows the validation of the order on that date by the head office, and that order is then forwarded by the head office to us. Now, this order is usually made out by the Manager or by the clerk of the Manager or some one in that F. W. Woolworth store. Here is one from Wilkesbarre (Defendant's Exhibit 29), itself, that is from the head office itself. Here is one from St. Joseph, Mo., (Defendant's Exhibit 25), via St. Louis, that bears the validation stamp of the St. Louis head office. You gentlemen understand these people are great big people, a great big syndicate, and they have to do their clerical work according to a system that is correct. Now, then, that was the first operation on these orders after we separated them from the other mail, and we hand that on to our Superintendent. I am showing you about the acknowledgment stamp, because it is important first because it shows the acknowledgment of the order, and who acknowledged it, and secondly, shows the date on which the orders were received at my office. To the best of my recollection, these acknowledgment cards were given to the office boy to post, after Miss Hall had made them out.

Now, in reference to the work that I did on these orders, starting here with order 7187 (Defendant's Exhibit 25 to 35), and continuing through 7197, that is not such an easy job as you would have been led to believe; in the first place, next to the serial number, there is a series of initials, and those initials stand for the salesman who is credited with the order; in other words, if a man at the end of the year wants to get certain commissions on orders that come in, we have to very carefully look over those orders to see to whom or to which salesman or to which commission house or which distributing agent that order is credited, so, therefore, it takes a good deal of judgment and knowledge to know just to which salesman to credit, and sometimes, I can't say that it was incorrect that morning, but it might have been, sometimes I have to go through a world of papers to find just to whom a certain order is to be credited. Then I enter in (Defendant's Exhibit 12) the various orders

here, too, the next column shows to whom the goods are to be shipped; of course that is not very difficult to do, that is just a mere copy. The store numbers are put down in case the stores have numbers, and then one must look over the order; I notice that one of the orders is one to R. E. Kendall (Defendant's Exhibit 34), at Plum St., Cincinnati, O., calling for a special, and that has to be noted in this column here, you will notice regular or special, notice here the word special out here opposite R. E. Kendall, that thing has to be very carefully noted also. Now, in this column (Defendant's Exhibit 12) is the order number, and that order number is the customer's order number, to which we have to refer always when we ship that order. Now, in these cases like on these Woolworth orders, when there is no order number, we put down the date with the month, so in that way that gives it, 4-22, that was the date the order was made out, so we can absolutely refer to it; in this column (Defendant's Exhibit 12), is the shipping point and the date we are going to ship it, and in this column represents the date on which the order was received, and the month, which is April 26th, according to the acknowledgment, corresponding to the acknowledgment stamp. Now, after that work, after the order was acknowledged and entered in here (Defendant's Exhibit 12), the next step is the filling in on the proper place on this sheet (Defendant's Exhibit 2), which has already been tendered and identified. Now, the work done by me on that day right here, that was Saturday, Saturday is the second day of the fiscal week, Friday, Saturday, Sunday, Monday, Tuesday, Wednesday and Thursday,—Saturday is the second day, and you will notice, gentlemen, there are only two entries there (Defendant's Exhibit 7), the work not having been done since I left the factory, there are only two entries there, and the last entry is April 26th, which was Saturday. Now then, the information on this sheet is as follows; I go through the orders and find out the number of gross of pencils which our customers order which fall in certain price groups, that is, to find the number of gross of pencils for which the Pencil Factory gets 60 cents a gross, and I put them down under the first column, the second under the column RI, which means rubber inserted, and for which we get an average price of 80 cents, I go through the same thing and put the figures all out, in this case, it was 102; then we have a price group on which we get an average of $1.25, and it covers a range in price from $1.00 per gross to $1.40; there were 116 gross of such pencils ordered with these orders which were received that morning. The next price group are those on which we figure on an average price of $1.75 a gross, and falling within those limits of $1.50 to $1.95 inclusive; in this case, there were 34½ gross; then there is a group between $2.00 and $2.95, averaging $2.50, and there was 100½ gross that day, then $3.00 and over, which we always figure at just $3.00, we have goods that we get $3.25 for, and some that we get $3.50 for, but we figure them all at $3.00, so it is a conservative estimate. The reason this is done is this; in the pencil business, just like in all manufacturing businesses, that is manufacturing an article that has to be turned out in large quantities, it behooves the sales department to sell as much

of your high priced goods as possible, and as few of your cheap goods, and therefore, if you know how many of the cheap goods and how many of the better grade of goods you are selling, it serves as a barometer on the class of goods that is being sold. You can see that this job takes quite a little figuring and quite a little judgment.

After finishing that work, I went on to the transcription of these orders to these requisitions (Defendant's Exhibit 25 to 35), and notwithstanding an answer that has been made, I wrote these requisitions myself. That is my handwriting and you can read every one of them through. Here is one F. W. Woolworth (Defendant's Exhibit 25), I wrote that one, and another one F. W. Woolworth (Defendant's Exhibit 26), I wrote that one, and another one F. W. Woolworth (Defendant's Exhibit 29). Here is one 5 and 10 Cent Store, Sault Ste Marie (Defendant's Exhibit 31), I wrote that one, and here is F. W. Woolworth, DeKalb, Illinois (Defendant's Exhibit 28), and Logansport, Indiana (Defendant's Exhibit 27). That is all my handwriting; excepting the amounts that are placed down here under the dates when the shipment of these orders were made, which is in the handwriting of my assistant, Mr. Schiff. This part, the amount, date, numbers, address, salesman, date April 26th, and the order number, taking the date in lieu of the order number, as I explained previously, that is all my hand-writing,—everything except that amount there and the subsequent date, that is in my hand-writing and the work on all of those was done on the morning of April 26th.

Miss Hall left my office on her way home at this time, and to the best of my information there were in the building Arthur White and Harry Denham and Arthur White's wife on the top floor. To the best of my knowledge, it must have been from ten to fifteen minutes after Miss Hall left my office, when this little girl, whom I afterwards found to be Mary Phagan, entered my office and asked for her pay envelope. I asked for her number and she told me; I went to the cash box and took her envelope out and handed it to her, identifying the envelope by the number. She left my office and apparently had gotten as far as the door from my office leading to the outer office, when she evidently stopped and asked me if the metal had arrived, and I told her no. She continue on her way out, and I heard the sound of her footsteps as she went away. It was a few moments after she asked me this question that I had an impression of a female voice saying something; I don't know which way it came from; just passed away and I had that impression. This little girl had evidently worked in the metal department by her question and had been laid off owing to the fact that some metal that had been ordered had not arrived at the factory; hence, her question. I only recognized this little girl from having seen her around the plant and did not know her name, simply identifying her envelope from her having called her number to me.

She had left the plant hardly five minutes when Lemmie Quinn, the foreman of the plant, came in and told me that I could not keep him away from the factory, even though it was a holiday; at which I smiled and kept on working. He first asked me if Mr. Schiff had come down and I told him he had not and he turned around and left. I continued work until I finished this work and these requisitions and I looked at my watch and noticed that it was a quarter to one. I called my home up on the telephone, for I knew that my wife and my mother-in-law were going to the matinee and I wanted to know when they would have lunch. I got my house and Minola answered the phone and she answered me back that they would have lunch immediately and for me to come right on home. I then gathered my papers together and went up stairs to see the boys on the top floor. This must have been, since I had just looked at my watch, 10 minutes to one. I noticed in the evidence of one of the witnesses, Mrs. Arthur White, she states it was 12:35 that she passed by and saw me. That is possibly true; I have no recollection about it; perhaps her recollection is better than mine; I have no remembrance of it; however, I expect that is so. When I arrived up stairs I saw Arthur White and Harry Denham who had been working up there and Mr. White's wife. I asked them if they were ready to go and they said they had enough work to keep them several hours. I noticed that they had laid out some work and I had to see what work they had done and were going to do. I asked Mr. White's wife if she was going or would stay there as I would be obliged to lock up the factory, and Mrs. White said, no, she would go then. I went down and gathered up my papers and locked my desk and went around and washed my hands and put on my hat and coat and locked the inner door to my office and locked the doors to the street and started to go home.

Now, gentlemen, to the best of my recollection from the time the whistle blew for twelve o'clock until after a quarter to one when I went up stairs and spoke to Arthur White and Harry Denham, to the best of my recollection, I did not stir out of the inner office; but it is possible that in order to answer a call of nature or to urinate I may have gone to the toilet. Those are things that a man does unconsciously and can not tell how many times nor when he does it. Now, sitting in my office at my desk, it is impossible for me to see out into the outer hall when the safe door is open, as it was that morning, and not only is it impossible for me to see out, but it is impossible for people to see in and see me there.

I continued on up Forsyth to Alabama and down Alabama to Whitehall where I waited a few minutes for a car, and after a few minutes a Georgia Avenue car came along; I took it and arrived home at about 1:20. When I arrived at home, I found that my wife and my mother-in-law were eating their dinner, and my father-in-law had just sat down and started his dinner. I sat down to my dinner and before I had taken anything, I turned in my chair to the telephone, which is right behind me and called up my brother-in-

law to tell him that on account of some work I had to do at the factory, I would be unable to go with him, he having invited me to go with him out to the ball game. I succeeded in getting his residence and his cook answered the phone and told me that Mr. Ursenbach had not come back home. I told her to give him a message for me, that I would be unable to go with him. I turned around and continued eating my lunch, and after a few minutes my wife and mother-in-law finished their dinner and left and told me good bye. My father-in-law and myself continued eating our dinner, Minola McKnight serving us. After finishing dinner, my father-in-law said he would go out in the back yard to look after his chickens and I lighted a cigarette and laid down. After a few minutes I got up and walked up Georgia avenue to get a car. I missed the ten minutes to two car and I looked up and saw in front or Mr. Wolfsheimer's residence, Mrs. Michael, an aunt of my wife who lives in Athens, and there were several ladies there and I went up there to see them and after a few minutes Mrs. Wolfsheimer came out of the house and I waited there until I saw the Washington street car coming and I ran up and saw that I could catch the car. I got on the car and talked to Mr. Loeb on the way to town. The car got to a point about the intersection of Washington street and Hunter street and the fire engine house and there was a couple of cars stalled up ahead of us, the cars were waiting there to see the memorial parade; they were all banked up. After it stood there a few minutes as I did not want to wait, I told Mr. Loeb that I was going to get out and go on as I had work to do. So I went on down Hunter street, going in the direction of Whitehall and when I got down to the corner of Whitehall and Hunter, the parade had started to come around and I could not get around at all and I had to stay there fifteen or twenty minutes and see the parade. Then I walked on down Whitehall on the side of M. Rich & Bros.' store towards Brown and Allen; when I got in front of M. Rich & Bros.' store, I stood there between half past 2 and few minutes to 3 o'clock until the parade passed entirely; then I crossed the street and went on down to Jacobs and went in and purchased twenty-five cents worth of cigars. I then left the store and went on down Alabama street to Forsyth street and down Forsyth street to the factory, I unlocked the street door and then unlocked the inner door and left it open and went on up stairs to tell the boys that I had come back and wanted to know if they were ready to go, and at that time they were preparing to leave. I went immediately down to my office and opened the safe and my desk and hung up my coat and hat and started to work on the financial report, which I will explain. Mr. Schiff had not come down and there was additional work for me to do.

In a few minutes after I started to work on the financial sheet (Defendant's Exhibit 2), which I am going to take up in a few minutes. I heard the bell ring on the time clock outside and Arthur White and Harry Denham came into the office and Arthur White borrowed $2.00 from me in advance on his wages. I had gotten to work on the financial sheet, figuring it out,

when I happened to go out to the lavatory and on returning to the office, the door pointed out directly in front, I noticed Newt Lee, the watchman, coming from towards the head of the stairs, coming towards me. I looked at the clock and told him the night before to come back at 4 o'clock for I expected to go to the base ball game. At that time Newt Lee came along and greeted me and offered me a banana out of a yellow bag which he carried, which I presume contained bananas; I declined the banana and told him that I had no way of letting him know sooner that I was to be there at work and that I had changed my mind about going to the ball game. I told him that he could go if he wanted to or he could amuse himself in any way he saw fit for an hour and a half, but to be sure and be back by half past six o'clock. He went off down the stair case leading out and I returned to my office. Now, in reference to Newt Lee, the watchman, the first night he came there to watch, I personally took him around the plant, first, second and third floors and into the basement, and told him that he would be required, that it was his duty to go over that entire building every half hour; not only to completely tour the upper four floors but to go down to the basement, and I specially stressed the point that that dust bin along here was one of the most dangerous places for a fire and I wanted him to be sure and go back there every half hour and be careful how he held his lantern. I told him it was a part of his duty to look after and lock that back door and he fully understood it, and I showed him the cut-off for the electric current and told him in case of fire that ought to be pulled so no fireman coming in would be electrocuted. I explained everything to him in detail and told him he was to make that tour every half hour and stamp it on the time card and that that included the basement of the building.

Now, this sheet here is the factory record (Defendant's Exhibit 7), containing ~~the lists of the pencils in stock and the amount of each and every~~ number; the amount of each and every one of our pencils which we manufacture at the end of any given week. There are no names there. We make the entries on this sheet by trade notes. Here is a sample case containing the pencils which are manufactured at the Forsyth Street plant. That is just as an explanation of what these figures are.

Well, I expect you have gotten enough of a glance at them for you know that there are a great many pencils and a great many colors, all sorts and styles; all sorts of tips, all sorts of rubbers, all sorts of stamps—I expect there are 140 pencils in that roll. That shows the variety of goods we manufacture. We not only have certain set numbers that we manufacture, but we will manufacture any pencil to order for any customer who desires a sufficient number of a special pencil, into a grade similar to our own pencil. Now, this pencil sheet (Defendant's Exhibit 7) when I looked at it about half past eleven or thereabouts on Saturday morning, was incomplete. It had the entry for Thursday, April 24th, omitted. Mr. Schiff had entered the pro-

duction for April 18th, 19th, 22nd and 23rd, but he had omitted the entry for the 24th, and the 24th not being there, of course it was not totaled or headed, so it became necessary to look in this bunch of daily reports (Defendant's Exhibit 4a, 4b, 4c, 4d) which was handed in every day by the packing forelady, sort out the various pencils noted on there, and place them in their proper places. Before proceeding further on that, I want to call your attention to the fact that we use this sheet (Defendant's Exhibit 7) for two weeks. You notice two weeks ending down there April 27th, April 17th, and one ending the week later, April 24th, Mr. Schiff, I notice, put April 17th at the top and the date corresponds to the entries here on the side; these are the dates alongside of each entry. Now, where we have any special pencil, as a general rule—for instance, take two 10-X special up there; we manufacture two 10-X special for the Cadillac Motor Company. Now, there is a 660-X pencil (Defendant's Exhibit 7); that 660-X pencil we call Panama, but in this entry it is called Cracker-Jack. Now, here is another 660-X special (Defendant's Exhibit 7), ours being Panama and this the Universal 660-X special. In other words, gentlemen, we put the name of the customer, if he wants business in a sufficient quantity. Well, I had to go through this report for Thursday (Defendant's Exhibit 4a), handed in by Miss Flowers, the forelady of the packing department, as she said, on Friday; I had to go through it and make the entries. Now, after I made the entries, I had to total each number for itself; that is, the number of 10-X, 20-X, 30-X, etc. Now, I notice that both of the expert accountants who got on the stand, pointed out two errors. While those errors are trivial, yet there is enough of human pride in me to explain that those errors were not mine. Those errors, one of one and a half gross and one of one gross, in totalling up, these totals here on the 18th and 19th—those entries were made by Mr. Schiff. I don't expect he meant to make an error, but they happen to be in his handwriting. Those totals were already down there for the various days when I got the sheet and I always take them as correct without any checking of his figures. The only figures that I check are my own figures. I add my correct figures to his figures and of course, not having checked the figures, I had to assume he entered it correctly, so I would not have known it. As I say, my usual method is to take his figures as correct per se. Now, after I entered them in the total, the next thing I did was to make out the job sheet; the job or throw-outs. Now in regard to these jobs, if I recall it correctly, was the only error that the expert accountant found in my work on the financial sheet for that day, but it really was not an error, as I will show you. He didn't know my method of doing that, and therefore, he could not know the error. When I explain to you fully the method in which I arrived at these figures you also will see they are not in error. Now among the packing reports that are handed into the office just like Miss Eula May handed this (Defendant's Exhibit 4a) in from the packing room proper, there is another room where pencils are packed, viz.: the department under the foreladyship of Miss Fannie Atherton, head of the job department. The jobs are our seconds or throw-outs

for which we get less money, of course, than for the first. You see that Fannie A (Defendant's Exhibit 4B), that is Fannie Atherton. That is the job department. Now, I took each of those job sheets (Defendant's Exhibit 4B) and separated them from the rest of those sheets, finding out how many jobs of the various kinds were packed that week. Now, this sheet (Defendant's Exhibit 3) shows that there were 12 different kinds of jobs packed that day. Each of them, you will notice, has a different price. That is the number of jobs 0-95, or the number of job 114 (Defendant's Exhibit 3); that is the number of the job, not the amount, but the number by which it is sold. Out here (Defendant's Exhibit 3) you see the amount of that job which was packed; 180 gross, one gross, six gross, 24 gross, etc. Then you will find the actual price we received for each. Then I make the extensions and find the number of gross of pencils, 180 gross at 40 cents, of course, is $72.00 (Defendant's Exhibit 3). In other words, there is the actual number of jobs packed that day, the price we actually got for them, and the extensions are accurate and the totals are correct; the total amount of gross is totaled correctly, the total gross packed and the total amount of the value of those gross are the two figures that are put on that financial report (Defendant's Exhibit 2), 792 gross jobs, $396.75 (Defendant's Exhibit 3), being absolutely correct, but in getting the average price, you notice 50.1 cents down below here (Defendant's Exhibit 3), I just worked it approximately, because nobody cares if it cost so small a fraction—the average price of those jobs, 50.1 cents, and six hundredths—that six hundredths was so small I couldn't handle it, so I stopped at the first decimal. Now, in arriving at the total number of gross and the total value of pencils, which are the two figures really important, I divided one by the other. I also used, in getting up the data for the financial sheet, by the way, one of the most important sheets is this very little sheet here (Defendant's Exhibit 3). It looks very small, but the work connected with it is very large. Now, some of the items that appear on here are gotten from the reports which are handed in by the various forewomen. Now, you saw on the stand this morning Mr. Godfrey Winekauf, the sueprintendent of the lead plant; there is a report (Defendant's Exhibit 4C) of the amount of lead delivered that week, two pages of it; the different kinds of lead, No. 10 lead, No. 940, No. 2 and No. 930, and so on. Now, here is a pencil with a little rubber stuck on the end; we only put six inches of lead in that, and stick rubber in the rest. Now here (Defendant's Exhibit 4D) is the report of L. A. Quinn, foreman of the tipping plant. He reports on this the amount of work of the various machines, that is, the large eyelet machine, the small eyelet machine and the other machines. Then he notates the amount of the various tips used that he had made that week. Now, we have, I expect, 22 different kinds of tips, and one of them is a re-tip, and we never count a retip as a production. Now, this was made out (Defendant's Exhibit 7) for the week ending April 24th by Mr. Irby, the shipping clerk, that is, the amount of gross of pencils that he ships day by day. There were shipped 266 gross the first day, which was Friday in this case, Friday the

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